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ABSTRACT

Findings and recommendations regarding the regulation and provision of child day care in Virginia are reported. Most of the data in the report are based on recent Joint Legislative Audit and Review Commission surveys of parents, child care providers, regulatory personnel, and child care programs in other states. In general, child day care in Virginia is regulated by the State's Department of Social Services through the licensing of child care centers and family day care homes. However, only about 3% of all providers are licensed, and there is no clear, comprehensive goal governing regulation. Consequently, regulation has been applied narrowly and inconsistently. To ensure the protection of children in care, child day care arrangements should be regulated by the state in a fair, consistent manner. This report presents several options which would provide for more comprehensive, equitable regulation of child day care providers. The Commonwealth has undertaken a number of program initiatives designed to improve availability and promote high quality for child day care. Other initiatives that would promote availability, affordability, and high quality in child day care are presented; these include: allowing schools to provide before- and after-school care, expanding resource and referral services, and increasing provider training and parent education. Cost of regulation estimates and other related materials are appended. (RH)

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The Virginia General Assembly

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Regulation and Provision of Child Day Care in Virginia

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REPORT OF THE
JOINT LEGISLATIVE
AUDIT AND REVIEW COMMISSION ON

Regulation and Provision of Child Day Care in Virginia

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

HOUSE DOCUMENT NO. 3

COMMONWEALTH OF VIRGINIA
RICHMOND
1990

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Preface

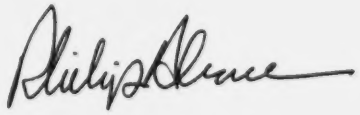
Senate Joint Resolution 41 and House Joint Resolution 116 of the 1988 Session directed JLARC to review the regulation of child day care as well as methods for improving the availability and quality of child care in Virginia. This report presents staff findings and recommendations regarding the regulation and provision of child day care.

In general, child day care is regulated by the Department of Social Services through the licensing of child care centers and family day care homes. However, there is currently no clear, comprehensive goal governing that regulation. Consequently, regulation has been applied narrowly and inconsistently. Only about 20 percent of the children currently in child care are in licensed day care arrangements, and only about three percent of all providers are licensed. To ensure the protection of children in care, child day care arrangements should be regulated by the State in a fair, consistent manner. This report presents several options which would provide for more comprehensive, equitable regulation of child day care providers.

In fulfilling its role of improving availability and promoting quality of child day care, the Commonwealth has undertaken a number of program initiatives. Additional initiatives that would promote availability, affordability, and quality in child day care are presented in this report, including: allowing schools to provide before- and after-school care, expanding resource and referral services, and increasing provider training and parent education opportunities.

I am pleased to report that the Secretary of Health and Human Resources and the Department of Social Services support the study recommendations. The Secretary is currently working with the Joint Subcommittee Studying Early Childhood and Day Care Programs in developing a plan for implementing study recommendations.

On behalf of the JLARC staff, I would like to thank the Secretary of Health and Human Resources, staff of the Department of Social Services and the Department for Children, and the parents, providers, and associations that assisted in our review.



Philip A. Leone
Director

September 11, 1989

JLARC Report Summary

Child day care is a State and national issue. For the most part, growing public interest has stemmed from the large number of mothers with young children entering the workplace and the concerns of parents about the adequacy and affordability of care.

There are two primary roles the State can fulfill regarding child day care: the regulation of day care and the promotion of quality and availability. The General Assembly recognized the importance and interdependence of these roles and included aspects of both in mandating this study of child day care.

Current regulation of child day care primarily involves the licensing of child care centers and family day care homes which meet the definitions set out in State law. Specific legislative exclusions to licensure for centers are generally based on sponsorship, while for homes they are generally based on the number of children in care.

Recent initiatives to improve the provision of child day care in Virginia have addressed problems with availability, affordability, and quality. These initiatives included supporting a child care center for State employees, funding child day care for low-income families, and creating a council to plan, coordinate, and evaluate day care and early childhood education programs for at-risk four-year olds.

This report examines the State's roles in regulating and improving the provision of child day care. Study findings and recommendations are referenced in abbreviated form in this summary. Detailed explanations and specific recommendations are contained in the text of this report. The suggested changes and options are consistent with Senate Joint Resolution 41 and House Joint Resolution 116, passed by the 1988 General Assembly, requesting the Joint Legislative Audit and Review Commission (JLARC) to design a system which equalizes the impact of regulation on all types of care. While other courses of action in improving the regulatory system are possible, and have been used in other states, the recommendations in this report reflect the specific nature of child day care in Virginia and the general system of regulation already adopted by the State.

The State can improve its regulation of child day care by: (1) revising the current standards to focus on the health, safety, and well being of children, (2) applying the minimum standards to an expanded number of day care providers, and (3) providing parents with information to help them locate and evaluate the appropriate type of day care for their children. The regulatory option proposed in this report assumes that many of the standards not related to ensuring health, safety, and well being would be revised or eliminated.

Why Virginia Regulates Child Day Care

All states are involved in some way in regulating child day care. Through regulation, the Commonwealth has legal authority and resources beyond those of parents and providers that can be used to protect the children in day care. Although the State cannot guarantee absolute protection when children are in care, regulation can ensure that obvious safety and health threats are eliminated in day care situations — thereby reducing the risks for physical and emotional harm.

Minimal standards can be set for individuals in a caregiving role as well as the facilities where care is provided. In addition, when parents or regulatory staff observe problems in day care subject to regulation, corrective action can be taken. However, the State's ability to monitor and correct problems in unregulated situations is limited to criminal prosecution — after children have been harmed or abused. Therefore, children in unregulated day care situations are at greater risk. This report contains numerous case examples to support a preventive rather than reactive approach to day care regulation.

State Goals for Regulating Child Day Care Need to Be Clearly Stated

Even though the need to regulate child day care has been recognized and undertaken by the Commonwealth since the 1920s, the State's current role in regulating child day care is neither clear nor comprehensive. In fact, no goal for the child day care regulatory system has been clearly identified by the State. In addition, the regulatory system has not been grounded in solid regulatory principles to ensure that regulation is broadly and consistently applied, flexible, and reasonable and enforceable.

The lack of goals and principles is a serious shortcoming because it increases the likelihood that regulation will be without clear purpose and might be inconsistently applied. When providers are not treated consistently and equitably, children in care are not afforded regulatory protection. In addition, the lack of goals can result in under- or over-regulation of the providers of care.

Given the vulnerability of children, the most important goal of State regulation should be to protect children in care. To ensure their protection, regulatory treatment should be fair and consistent statewide — both in terms of who is regulated and the manner in which regulation is enforced. In Virginia, most child care is not covered by State regulation and regulation is inconsistently applied.

The Majority of Children are in Unregulated Child Care Arrangements

The majority of children in Virginia attend care arrangements that are not regulated as day care. No accurate estimate of the number of children in these arrangements had been made prior to the completion of this study. This study surveyed a representative sample of Virginia households to arrive at such an estimate. The survey sample was randomly selected and based on standard research methods.

Based on responses from this survey, the number of children in various types of child care arrangements was estimated. As of December 1988, one-third of the children under age 13 were cared for by

someone other than their parent or guardian at least once a week. These arrangements ranged from self-care in the child's own home to full-time attendance at a child care center. An estimated 178,000 of all children in care were cared for in family day care homes, 155,000 in child care centers or other children's programs, and 76,000 in the children's own homes.

Comparing the estimated number of children in different types of child care (409,000 including children in multiple arrangements) with the capacity of licensed child care centers and family day care homes (83,580) indicates that only 20 percent of children in Virginia attend arrangements that are regulated as child day care. (Approximately three percent of the providers are regulated.) Although not all of these care arrangements are child day care or should be regulated as such, the number of children in day care situations that are not protected by regulation is substantial. Examining family day care homes, for example, shows that only one percent of homes are State regulated. While not all of these homes should be required to be regulated, the small portion of regulated homes raises questions about the adequacy of State regulation to protect the basic health and safety of Virginia's children.

The Scope of the Regulatory System Is Narrow

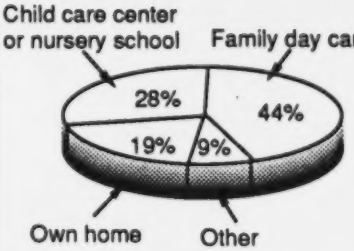
Child day care regulation has been narrowly and inconsistently applied because the definitions for child day care have not changed as the child day care industry has changed and many types of providers are specifically excluded from regulation. Although the provision of child day care has expanded and changed, the State's definitions for child day care providers have not evolved to accommodate these changes. Further, many recognized providers of child day care have been statutorily excluded from regulation through exceptions or exemption.

CHILD DAY CARE IN VIRGINIA

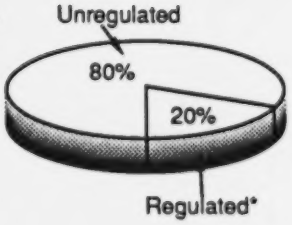
IMPORTANT STATEWIDE DEMOGRAPHICS

Households with children under 13	658,000
Households using child care	244,000
Total number of children under 13	1,018,000
Children under 13 in day care	337,000

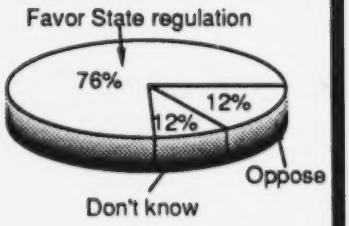
Child Care Arrangement Used



Children in State Regulated Care



Parents' Views on Regulation



*Approximately three percent of the providers are regulated by the State; 97% are not.

Source: JLARC/VCU survey of parents, and U.S. Bureau of the Census population estimates.

Definition of Day Care. While child day care is not specifically defined in statute, two types of care — child care centers and family day care homes — are defined for regulatory purposes. However, child day care services can no longer be classified solely in terms of home or center care. Recent increases in the demand for child day care have prompted the provision of care through a number of different arrangements and settings. The State's definitions for child day care providers have not expanded to encompass these changes. Consequently, many providers are not subject to regulation.

Exceptions and Exemption. Day care statutes also except or exempt many facilities and individuals from licensure based on the sponsorship of the program or the number of children in care. These exclusions from regulation raise questions about the adequacy of the protection for children as well as the equity in the treatment of providers. The State does not have regulatory authority over excepted caregivers or centers. These centers and caregivers are neither monitored to ensure protection of children nor prohibited from operating when there are serious problems with the care provided.

For example, Virginia is one of four states that does not regulate family day care homes with five or fewer children in care. Family day care homes are the most prevalent form of day care used by parents in Virginia. Nearly 178,000 children, or 44 percent of all children in day care, are cared for in this type of arrangement. If serious problems occur in an unregulated family day care home, parents have little recourse except to find another provider. Often, however, parents may not even be aware of the problems. Because many of these providers are not regulated by the State, it cannot intervene on behalf of children that appear to be at risk.

While the current exceptions afford no regulatory protection for the children in care, the exemption process for religiously-sponsored centers creates an illusion of protection when in fact little protection really exists. The Department of Social Services (DSS) does not have the authority to validate that exemption requirements have been met or to monitor for protection of children. Other mechanisms to monitor these centers through local agencies have not been effective in ensuring the protection of children in care.

If the State's primary goal for regulation of child day care is protection of the children in care, the reasons for not regulating all day care providers should be compelling. In order to equalize the impact on all providers as called for in SJR 41 and HJR 116, all child care centers, regardless of sponsorship, should be considered for regulation. Likewise, some form of regulation should be considered for family day care homes. However, the regulation of in-home providers (care provided in the child's own home), relatives, and cooperative arrangements among friends or neighbors would be intrusive, unenforceable, and would not result in additional protection. Parents must be responsible for monitoring these particular day care providers.

Recommendations. To address concerns about the current scope of regulation for child day care, the Secretary of Health and Human Resources should prepare a comprehensive proposal for improvements to the State's regulatory system for child day care and submit it to the Joint Subcommittee Studying Early Childhood and Day Care Programs. The proposal should include the following components:

- A definition of child day care.
- Elimination of the exceptions for nursery schools and hospital-sponsored care from the definition of a child care center, as well as the ex-

ceptions from the definition of a family day care home, should be considered.

- A requirement that all programs and individuals providing child day care services be regulated, including services operated by State and local governments, should be considered. An exception should be considered for three types of care: family day care provided to relatives only, in-home care, and cooperative arrangements.

- Elimination of the exemption for religiously-sponsored child care centers should be considered. If the option for exemption for religiously-sponsored child care centers is continued, the proposal should as a minimum: (i) authorize DSS to conduct on-site inspections at the time of initial application and annually thereafter, and (ii) include criminal records checks of staff.

- If existing exclusions to licensure as a child care center are continued, the proposal should consider granting the Commissioner of DSS the authority to investigate all complaints at excepted or exempt child care centers. In addition, the proposal should consider granting the Commissioner of DSS the authority to seek injunctive action in instances in which children are found to be at risk.

The Regulatory System Lacks Flexibility

The State's reliance on licensure to protect the children in child day care has resulted in a regulatory system that has little flexibility. Over-reliance on licensure, coupled with the narrow definitions of a child care center and family day care home, has meant that the majority of children attend unregulated child day care programs. In addition, many providers who wish to be licensed cannot be because they do not meet the definition of a center or home and DSS will not voluntarily license them.

Child Care Centers. The State should continue to license child care centers. Licensure is necessary for child care centers because of the number of children in care. In addition, no other regulatory authority inspects the programs for child-specific concerns, and assurance is needed on a continual basis that minimal standards continue to be met. In order for licensure to be successfully implemented however, the current standards should be revised to focus on the health, safety, and well-being of the children in care.

Family Day Care Homes. The State currently has no means of regulating family day care homes that care for fewer than six unrelated children, even though these providers are recognized as child day care providers. Therefore, local government agencies, without proper State authority, are currently regulating some of these providers in order to offer the children in care some protection and to provide services to parents and providers. The State should consider registering these small day care homes in some form. If the goal to protect the children in care is accepted, mandatory registration would be most appropriate.

Large family day care homes, those caring for more than five children, should continue to be licensed by the State. Children who are related to the provider are not currently considered when determining whether a provider should be licensed as a family day care home. Related children (other than the provider's own children) are counted in determining subjectivity to child care center standards. This inconsistency is very confusing for licensing staff and day care providers. The State should

begin to count all related children when determining the total number of children in care within a family day care home and a child care center for definitional and regulatory purposes.

Recommendations. Some of the problems with the State's current regulatory system could be eliminated or reduced: by requiring all child day care providers (other than relatives and in-home providers) to be mandatorily regulated through licensure or registration; by making the definitions used for child care centers, group day care homes, and small day care homes consistent with other State regulatory requirements; and by making the regulatory definitions and system flexible. As a component of the Secretary of Health and Human Resources' proposal, the following actions would enhance the State's role in regulating child day care:

- Definitions of a child care center, group day care home, and small day care home should be included.

- A requirement to license child care centers, group day care homes, and family day care systems and some form of registration of small day care homes should be included. In addition, in-home providers and relatives providing publicly subsidized child day care should also be allowed to be voluntarily regulated.

Reasonableness and Enforceability of Standards

Certain standards appear to be inappropriate and intrusive for the care provided by some segments of the industry. Although a detailed review of standards for child care centers and family day care homes was not a part of this study, JLARC staff noted several indicators that suggest problems with the reasonableness and enforceability of standards. These indicators were (1) concerns raised by regulatory staff at DSS, (2) comments from day care providers, and (3) the number and types of variances to the standards requested by providers.

Regulatory Staff Raise Questions about Standards. In the JLARC staff surveys of licensing administrators and licensing specialists, these regulatory staff expressed a number of concerns about the licensing standards. For example, about one-half of the licensing specialists reported that the child care center standards are unreasonable or unnecessary and that they did not receive clear explanations of new or modified standards. Such concerns may have an impact on the effectiveness of the regulatory system, and on the ability of regulatory staff to provide proper oversight of day care providers. It is not clear why such concerns have not been fully addressed by DSS, the State Board of Social Services, or the Child Day-Care Council.

Providers Have Difficulties with Standards. Like regulatory staff, the day care providers surveyed by JLARC staff also commented on the difficulties of complying with some standards. While some complaints from regulated providers might be expected, the responses were specific, and quite different for centers and family day care homes. Few family day care providers found the standards with which they must comply difficult to meet. On the other hand, one-third of the center staff responding to the JLARC survey noted problems with the standards. In addition, over a three-year period, more than 540 requests for variances to licensing standards were made by child care centers.

Recommendations. The Secretary of Health and Human Resources should consider the following actions to assist in making the regulatory system for child day care more reasonable and enforceable:

- Directing the Child Day-Care Council to review and amend as necessary the child care center licensing standards. The council should ensure that standards address the health, safety, and well-being of children in care, and intrude to the least possible extent into the legitimate activities of private businesses and citizens.

- Directing the Child Day-Care Council to promulgate separate child care center licensing standards for programs that serve special populations such as school-age children or children in occasional care.

- Directing the State Board of Social Services to review and amend as necessary the licensing standards for family day care systems and group day care homes and promulgate registration standards for small day care homes.

- Specifying that registration should include a written application, criminal records check, and a self-administered safety and health evaluation checklist as part of the registration process for small day care homes, if a mandatory registration system is adopted.

The State Could Undertake Additional Initiatives to Promote Availability, Affordability, and Quality of Child Day Care

The State has a prominent role in improving the availability and affordability of child day care as well as in promoting the provision of quality care. Although the Commonwealth has already undertaken a number of initiatives in these areas, additional initiatives would promote availability, affordability, and quality of care.

Availability. There does not appear to be a general, statewide shortage of child day care services in Virginia. Parents have reported difficulties in finding certain types of care as well as being unable to work due to problems obtaining care for their children. Several actions were favored by parents and associations in addressing these availability problems. While the use of public schools to provide much needed before- and after-school care for their students has been recommended by many other groups and studies, this option is still not available to all school boards. Even though resource and referral programs are among the most helpful services for parents who need assistance in locating appropriate care for their children, these programs do not currently operate statewide. Continuing problems in attracting and retaining qualified staff and in obtaining liability insurance were cited by many providers of care; these difficulties could affect the availability of care.

Affordability. Although the State assists families with child day care expenses both directly and indirectly, the cost of child day care is still a concern for many parents — especially those with incomes below $35,000. For example in 1986, Virginia initiated the Child Day Care Fee System to support low-income working families that were not eligible for other public assistance. The General Assembly has expanded this program with additional appropriations and a pilot voucher program. The State also assists parents with day care expenses by allowing an income tax deduction for dependent care costs. However, the current deduction is more beneficial for higher-income families than for lower-income families. Other income tax options which target the assistance to lower-income families are available.

Quality. As an important complement to regulating care, the State could promote quality child day care by making more training available to providers and enlisting the support of parents as monitors of

care. Although training is currently available to licensed day care providers, the need or desire for additional training was recognized by a majority of regulated and unregulated providers. Other educational efforts should focus on parents so that they can better evaluate and select quality day care for their children. Although the State has some information available, a broad-based educational effort has not been undertaken. If parents are knowledgeable about what constitutes quality care, they can act as informal regulators by discussing with providers their concerns about undesirable practices and reporting problems to regulatory authorities.

Recommendations. In addition to the initiatives already begun by the State, several other actions could improve the availability, affordability, and quality of day care services in Virginia. These are:

- The General Assembly may wish to consider granting all school boards permission to sponsor day care programs that operate outside of school hours and adding resource and referral programs to the core services of the four information and referral centers currently without this service.

- The State Corporation Commission should continue to monitor the availability of liability insurance for child care centers and family day care homes.

- The Department of Social Services should provide registered family day care providers with voluntary training opportunities.

- The Department of Social Services should develop a pamphlet for parents about the regulation of child day care. The pamphlet should include telephone numbers for parents to call with complaints about regulated care and should be distributed to parents through a variety of locations.

- The resource and referral components of the information and referral system should be used to promote parent education on choosing quality day care.

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I. Introduction

Throughout much of this century, the State has played an important part in child day care. Its traditional role has been to regulate some providers of child day care services. More recently, the State has become involved in the promotion of quality and availability through statewide initiatives. The Commonwealth is involved in child day care regulation and initiatives to promote quality care because it has resources and authority beyond those of individual parents or groups of parents. By law and regulation, it can compel compliance with standards to protect children. Its agencies and institutions can collect and disseminate information on a statewide basis. In short, it can and does have an important impact on day care for Virginia's children.

STUDY MANDATE

In its mandate for this review, the General Assembly recognized the importance of the State's traditional role in regulation and its emerging role in promoting the availability of quality care. In response to concerns by regulatory authorities, providers, and children's advocates, the 1988 General Assembly passed two resolutions directing the Joint Legislative Audit and Review Commission (JLARC) to review the regulation of child day care as well as methods for improving quality and availability of care. Senate Joint Resolution 41 and House Joint Resolution 116 (Appendix A) ask for a reconsideration of the current regulatory system for child day care.

The study mandate specifically asks for a review of whether exemptions and exceptions to regulation are appropriate; how family day care is defined and regulated; whether separate standards should be formulated for "family day care homes and group family day care homes;" whether licensure, mandatory registration, or voluntary registration should be required for family day care homes; and how the impact of regulation for all types of day care can be equalized. Additional areas of interest included the opinions of parents, providers, and interested associations regarding licensure; the funding needed if the number of exemptions and exceptions are reduced; the ways in which the availability and quality of care could be promoted; and the training received by day care providers.

The General Assembly has also established the Joint Subcommittee Studying Early Childhood and Day Care Programs, and directed that it review day care programs. The subcommittee postponed any action on recommendations concerning licensure pending the completion of the JLARC review. This report addresses many of the concerns raised by the subcommittee.

STUDY ISSUES

To examine all of the issues included in the study mandate, a comprehensive review of day care regulation was completed. Five specific questions dealing with day care regulation were examined:

- *What is the nature and scope of child day care in Virginia?* Demographic and statistical information was collected to describe the availability of care and the number of children in care.

- *What are the State's goals in regulating child day care?* This question examines the basic reason for the State's involvement in regulating child day care. The opinions of parents, providers, child care associations, and Department of Social Services (DSS) child day care regulatory staff were considered in reviewing the State's goals for regulation.

- *What is child day care and how should it be defined?* There are many different types of children's programs and services that parents can select for the care of their children. This question addresses whether the State has adequately defined day care within the context of all children's services to ensure equitable regulatory treatment for providers and children.

- *Which providers of child day care services should be regulated?* This question examines the extent to which exemptions and exceptions to licensure are appropriate, and how the impact of regulation can be equalized for all types of care.

- *What forms should the regulation of child day care take?* This question reviews how center and family day care are defined and regulated, whether separate regulatory forms should be used for small and group day care homes, whether existing standards are appropriate for all forms of care, and how the impact of regulation can be equalized. The funding needed if exemptions and exceptions are reduced is also addressed.

To address the study mandate related to a review of the State's more recent role to promote availability and quality of care, an additional question was developed:

- *How can the State improve the provision of child day care?* This question concerns certain statewide initiatives that could be considered to address the problems related to child day care identified by parents.

The JLARC staff findings and recommendations related to these questions build on the regulatory framework and initiatives already in place in Virginia. In

addition, the suggested changes and options are consistent with the mandate in SJR 41 and HJR 116 that the study design a system which equalizes the impact of regulation on all types of care. While other courses of action in improving the regulatory system are possible, and have been used in other states, the recommendations in this report reflect the specific nature of child day care in Virginia and the general system of regulation already adopted by the State.

RESEARCH ACTIVITIES

A number of research activities were undertaken to address the study issues. These activities included a public forum; surveys of parents, providers, interested associations, DSS regulatory staff, and other states; field visits; interviews; and document reviews.

Child Day Care Public Forum

A public forum was held in Richmond in April 1988, to allow for public comment on child day care and its regulation. The participants in the forum included parents, child care center operators, family day care providers, and representatives of private schools, the U.S. Army, State and local government agencies, and child care associations. The 44 speakers addressed a variety of issues including the need for licensure, opinions about exemptions and exceptions, the State's role in regulation, the burden of regulation on providers, and training for providers and licensing specialists.

Statewide Survey of Parents

To collect information from Virginia parents about child day care, a survey of parents, selected on a random basis throughout the State, was conducted. JLARC staff contracted with the Virginia Commonwealth University Survey Research Laboratory to complete the survey (hereafter referred to as the JLARC/VCU survey of parents). VCU called more than 2,000 households in November and December of 1988, identifying 552 families with children under 13 years of age. Of these, 205 households had children in some form of day care. Demographic information obtained from the surveyed families was compared to information about Virginia households from federal and State agencies. Surveyed families were representative of Virginia families when their income, race, and geographic locations were compared to the State as a whole.

Survey questions were designed to gather information about the types of care used by parents, numbers of children in care, and satisfaction with the care used. Other questions asked for opinions about day care regulation and initiatives the State

could take to improve day care. A summary of the responses to all of the survey questions is included at the end of this report as Appendix B.

Survey of Child Care Providers

The survey of child care providers involved two separate research efforts. The first was a mail survey of approximately 1,700 child care centers, regulated family day care homes, and other providers of children's services. More than 860 providers responded to the survey, for a response rate of 50 percent. The second effort was a telephone survey of 53 unregulated family day care providers by the Virginia Commonwealth University Survey Research Laboratory (hereafter referred to as the JLARC/VCU survey of providers). The questions on these surveys were designed to collect information on the number of children in care, program activities, hours that care was provided, the cost of care, training completed and desired, opinions concerning State regulation, and current problems in providing day care.

Survey of Licensing Specialists and Administrators

JLARC staff also surveyed all of the DSS regulatory staff — licensing specialists and regional administrators — involved in the regulation of child day care. The licensing specialists were surveyed by mail regarding their training, caseload, licensing activities, and experiences with licensing standards and enforcement. Regional administrators were surveyed by telephone regarding similar issues.

Survey of Associations

There are many associations in Virginia, including provider organizations and consumer groups, with an interest in the regulation of child day care services. To ensure that the concerns of these associations were considered as a part of the study, JLARC staff surveyed the 97 associations within Virginia that could be identified as having an interest in child day care. Of these associations, 63 responded to the survey for a response rate of 65 percent. Survey questions addressed the organizations' positions on child day care and regulation, and collected information on the services the associations offer to providers and parents.

Survey of Other States

The final survey effort was a telephone survey of 15 states. These states were selected on the basis of having unique or "model" regulatory systems (California, Connecticut, Georgia, Iowa, Kansas, Louisiana, Nevada, Tennessee, Texas, and Wisconsin), being geographically close to Virginia (Maryland and North Carolina), or having implemented initiatives of special interest (Indiana, Massachusetts, and

Missouri). With this survey, JLARC staff collected information about definitions of child day care, goals of regulation, forms of regulation used, and any recent initiatives that may have been implemented to improve the availability or quality of child day care services.

Field Visits

There are many types of child care programs available in Virginia. In order to understand what services are offered, and how the many programs differ, JLARC staff visited 73 programs across the State. These programs included child care centers, family day care homes, summer camps, parks and recreation programs, Boys Club and Girls Club programs, occasional care programs, and after-school programs as well as programs sponsored by employers, government entities, hospitals, and religious organizations. The visits included interviews with staff, tours of the facilities, and reviews of program characteristics.

To evaluate general differences in health and safety of care, JLARC staff used a standard checklist of items as a part of the field observations. The checklist included facility surroundings, indoor safeguards, supervision and discipline, fire safety, hygiene, food preparation, rest and sleep, infant and toddler feeding, special age considerations, vehicle use, animals and pets, and water sports and other outdoor program activities. In addition to visits to the 73 programs, JLARC staff observed licensing procedures and investigations of allegations and complaints by DSS licensing specialists.

Other Research Activities

Other research activities for the study included interviews with the staffs of the Department of Social Services; the Department for Children; and other State, federal, and local agencies. Numerous documents including Virginia's licensing standards and statistics, State and federal legislation, court cases, and child day care literature were also reviewed.

REPORT ORGANIZATION

This report examines the State's involvement in the regulation of child day care and in the promotion of quality day care services. Chapter II describes the growth of child care options in the Commonwealth, outlining who provides child care for children in Virginia and who uses child care services. Three chapters of the report address the regulation of day care in Virginia beginning with an examination of the current regulatory system in Chapter III. Chapter IV addresses three regulatory issues — the State's goals in regulating child day care, the definition of child day care,

and the providers which the State may wish to regulate. The forms that regulation should take and how those forms should be implemented are the subject of Chapter V. Finally, Chapter VI discusses several statewide initiatives that might be used to improve availability, affordability, and quality of care.

II. Child Care in Virginia

Each day hundreds of thousands of children are cared for in a variety of child care settings in Virginia, and the number of children in care continues to grow. As more women have entered the workplace, more children have needed care. According to the U.S. Bureau of the Census, the number of working mothers with children increased significantly in Virginia from 1970 to 1980. For mothers with children under six years of age the proportion working increased from 34 percent to 50 percent. For mothers with children six to 17 years of age, the proportion working increased from 50 to 63 percent. This dramatic increase in female participation in the labor force can be traced in part to changing attitudes about women in the workplace. In addition, economic recessions and inflation during the 1970s increased the need for families to have two incomes.

Families using child care in Virginia are diverse, with a variety of child care needs. Consequently, the child care industry has changed and become more diverse to meet those needs. Many traditional providers of care have expanded their services, while other organizations have begun for the first time to offer child care services. For example, a number of schools now sponsor extended day programs which provide supervision of children before and after academic classes. As a result, parents today have greater choices available to them than at any time in the past.

Despite the growing importance of child care to Virginia families and the growth of day care as an important industry, none of the government agencies or industry associations in Virginia had comprehensive, reliable information about the children in care and the providers caring for those children. The surveys conducted jointly by JLARC and VCU helped to fill the gaps in information about child day care in Virginia. For the first time, reliable estimates can be made for the number of children in care, the types of care used by Virginia families, and the total number of providers offering child care services.

From the estimates made by JLARC staff, child care services are used extensively by Virginia families with one-third of children under the age of 13 in some type of care. As a result, the day care industry is becoming more complex in order to accommodate the growing number of children in care. Clearly, working parents with children in day care and the day care industry are vital parts of the Commonwealth's growing workforce and economy.

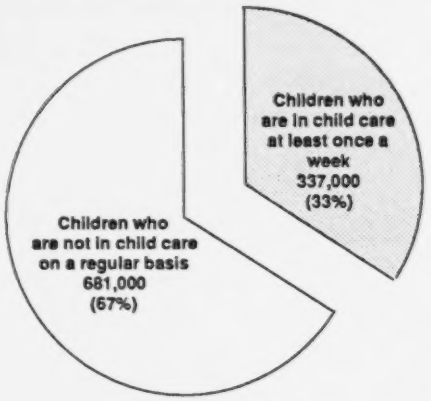
USE OF CHILD CARE IN VIRGINIA

JLARC staff estimate that approximately 658,000 households, or 30 percent of all Virginia households, have children under 13 years of age. Of these, an

estimated 244,000, or 11 percent of all Virginia households, use some type of child care arrangement for their children. Thus, an estimated 337,000 (33 percent) of approximately 1,018,000 children under 13 years of age were in child care in Virginia at the end of 1988 (Figure 1).

Figure 1

Estimated Number of Children under 13 in Child Care in Virginia


Children who are in child care at least once a week
337,000
(33%)
Children who are not in child care on a regular basis
681,000
(67%)

Source: JLARC/VCU survey of parents and U.S. Bureau of the Census population estimates.

Characteristics of Families Using Child Care

The use of child care can be viewed in a number of different ways, but one of the more useful comparisons is by family characteristics. This comparison helps to show who is using care, and to some extent, why care is used. Families with children under age 13 which use child care and those which do not use child care were compared (Figure 2). No differences in racial makeup were found between families that used care and those that did not.

However, families using child care tended to have higher incomes and to have both parents working. What the comparison shows is that child care is an important part of parents' ability to work and increase family income. This seems to be true for both single- and two-parent families.

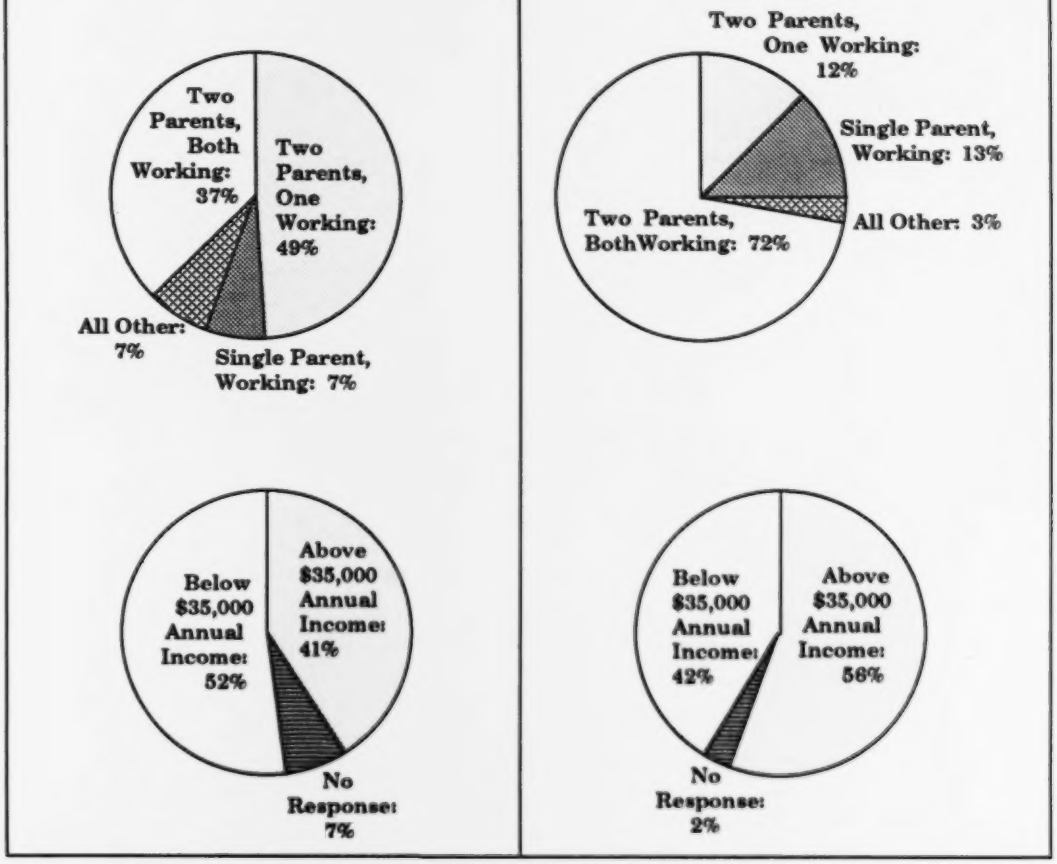
The residence of the children in child care was also examined. This analysis was useful because it helped to identify concentrations of children in care. As might be expected, this examination showed that 53 percent of the children in child care live in the State's three major metropolitan areas (Figure 3). These areas include Northern Virginia (Alexandria, Arlington, the City of Fairfax, and Fairfax County); the Richmond metropolitan area (Richmond, Chesterfield, and Henrico); and the Hampton Roads area (Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, Suffolk, and Virginia Beach). At the time of the 1980 census, 46 percent of children under age 13 lived in these 14 localities. It is interesting to note that 62 percent of the licensed capacity of child care centers and family day care homes is located in these 14 localities.

Types of Care Used in Virginia

A variety of child care arrangements are used in Virginia. Approximately 27 percent of families used more than one type of arrangement for at least one child.

Figure 2

Comparison of Virginia Family Characteristics


Families with Children under 13 Not Using Child Care (N=347)
Families with Children under 13 Using Child Care (N=205)
Two Parents, Both Working: 37%
Two Parents, One Working: 49%
All Other: 7%
Single Parent, Working: 7%
Two Parents, One Working: 12%
Single Parent, Working: 13%
Two Parents, BothWorking: 72%
All Other: 3%
Below $35,000 Annual Income: 52%
Above $35,000 Annual Income: 41%
No Response: 7%
Below $35,000 Annual Income: 42%
Above $35,000 Annual Income: 56%
No Response: 2%

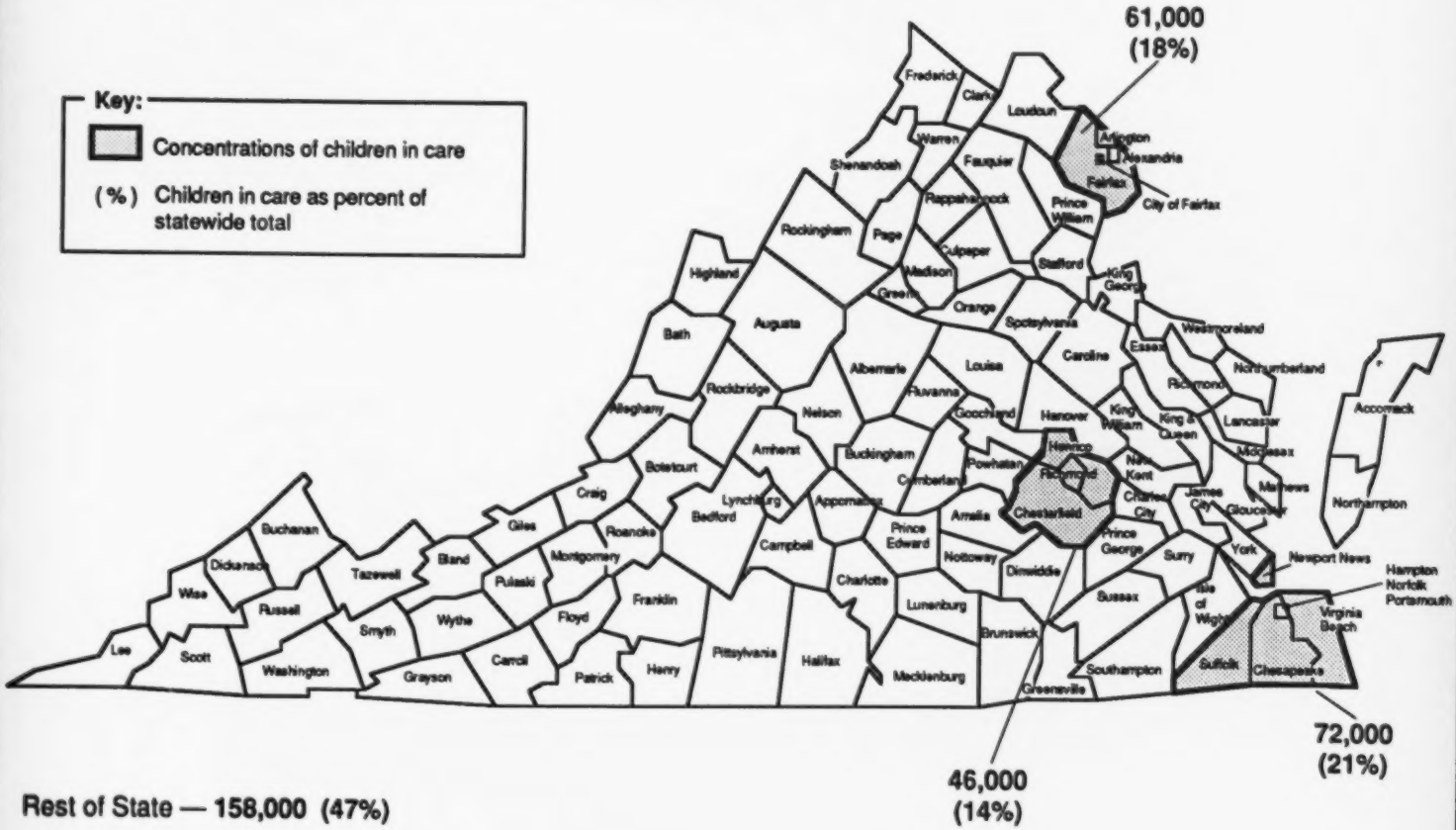
Source: JLARC/VCU survey of parents.

For example, a child may have stayed with his grandmother before school but attended a child care center after school. Exhibit 1 defines the basic types of care.

As shown in Table 1, the estimated number of children in each type of care ranged from 13,000 (three percent) in public school extended day programs to 178,000 (44 percent) in care provided in another home. (Appendix C includes a complete discussion of how the estimates were calculated.)

Figure 3

Areas With Largest Concentration of Children in Child Care



Source: JLARC/VCU survey of parents.

Exhibit 1

Definitions of Child Care Arrangements

Care in Another Home — care provided to a child in a private family home that is not the child's own which is commonly referred to as family day care. Includes care provided by a relative in the relative's home.

Child Care Center — defined in §63.1-195 of the *Code of Virginia* as "any facility operated for the purpose of providing care, protection and guidance to a group of children separated from their parents or guardian during a part of the day."

Nursery School — defined in §63.1-195 of the *Code of Virginia* as "a school operated primarily for educational instruction of children from two to five years of age...."

In-Home Care — care provided to children in their own home. Includes care provided by a relative in the child's own home.

Extended Day Program in Schools — before- and after-school care provided to school-age children in public and private school buildings.

Other Arrangement — child care in any setting other than another home, child care center, nursery school, the child's own home, or public or nonpublic school building.

Source: JLARC staff analysis of *Code of Virginia* and other documents.

In the JLARC/VCU survey, parents were asked whether their preschool children were kept in any of four types of arrangements: a child care center or nursery school, their own home (by someone other than a parent or guardian), another private home, or some other location (Figure 4). (Preschool children were defined as children who were five years of age or younger who did not attend school.)

As Figure 4 shows, preschool children were cared for in three main types of arrangements: in a home other than the child's own home; in a child care center or nursery school (with 46 percent of these families using a church-sponsored program); or in their own homes. Only six percent of families reported using any other type of care.

Table 1

Estimated Number of Children* in Various Child Care Arrangements

Child Care Arrangement	Estimated Number of Children	Percentage of Children in Each Type of Care
Care in another home	178,000	44%
Child care center or nursery school	113,000	28%
Own home	76,000	19%
Private school extended day program	14,000	3%
Public school extended day program	13,000	3%
All other arrangements	15,000	4%

* Some children may be in more than one type of care, and are included in more than one category.
Note: Percentages may not add to 100 due to rounding.

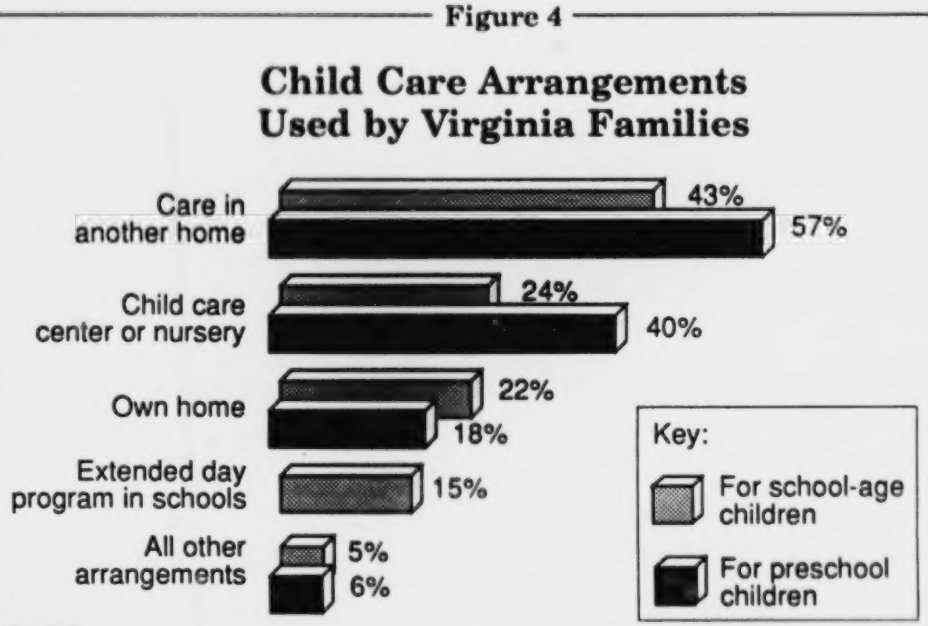
Source: JLARC/VCU survey of parents.

For school-age children, parents were asked about the same four types of arrangements in addition to before- and after-school care in public or private schools. (School-age children were defined as children between the ages of five and 12 who attended school.) School-age children were cared for in four primary settings: in another home; in child care centers (with about one-third of those using centers selecting church-sponsored centers); in their own homes; or in extended day programs in schools. Among those using school programs, care provided in public and private school was evenly split. Only five percent of households with school-age children reported using any other type of arrangement.

CHARACTERISTICS OF CHILD CARE PROVIDERS

Analysis of information from the JLARC and VCU surveys of providers shows that the providers and programs caring for children in Virginia may be

Figure 4



N = 205

Preschool children were defined as children five years of age or younger who did not attend school; school-age children were defined as children between the ages of five and 12 who attended school. Percentages do not add to 100 because categories are not mutually exclusive.

Source: JLARC/VCU survey of parents.

distinguished or characterized in several ways. Among the basic types of care, real differences appear to exist. The staffing and qualifications required for each type of provider differ. Each type of provider charges for care in a different manner, and the flexibility in scheduling care may vary by provider. Thus, the classifications typically used to distinguish the various types of care appear appropriate. And it is also clear from these distinctions that the day care industry is very complex, involving much more than traditional providers of care.

Basic Provider Distinctions

On the most basic level, child care providers and programs serving children can be distinguished by the type of care provided and the name given to that care. Generally, providers and programs fall into one of four groups: child care centers, other children's programs, family day care homes, and in-home providers. Child care centers included licensed and unlicensed programs. Other children's programs include nursery schools; public school-sponsored extended day programs; and programs sponsored by local recreation and parks departments, summer camps, Boys Clubs, and Girls Clubs which were not licensed as child day care.

Providers and programs may be further categorized by location, the number of children typically cared for, and the ages of the children in care. Child care centers and other children's programs are also often distinguished by their sponsorship and the focus or content of their programs.

Child Care Centers. Child care centers provide group care to children in a variety of locations such as a home, school, church, or building specifically designed as a center. Child care centers generally care for a large number of children. While the actual numbers reported in care ranged from seven to 290, centers responding to the survey averaged 69 children in care.

Although centers have typically been associated with the care of preschool children, many centers now accept school-age children or operate exclusively for this age group. Of the centers responding to the JLARC staff survey of providers, 24 percent had infants in care, 39 percent had toddlers, 86 percent preschoolers, and 69 percent school-age children. The youngest child in care at centers was two weeks old, and the age of the oldest child was 18 years.

A majority of the centers responding to the survey classified themselves as having non-profit status (55 percent), with about 42 percent reporting for-profit status. Twenty-six percent of the centers responding were sponsored by churches, six percent by schools, five percent by government agencies, three percent by employers, and two percent by hospitals. About five percent described themselves as occasional care, and four percent as "mothers' morning out" programs.

Other Children's Programs. The organizations responding to the survey of other children's programs sponsored various programs including before- and after-school programs, day and overnight summer camps, nursery school programs, skills development programs, and sports programs. For children's programs, the location of care depends as much on sponsorship as it does on the type of program offered. For example, before- and after-school programs may be held in a school building or the children may be transported to another location such as a youth organization building. Some nursery schools are located in churches, others are in buildings specifically designed as nursery schools.

Other children's programs are also typically designed for large groups. Overall, the average number of children in care at these programs was 142, which was high compared to the other types of providers. The average number of children in care varied considerably according to sponsorship and type of program. The youngest child in care was two weeks old, and the oldest was 18 years.

Family Day Care Homes. Family day care homes typically offer a home environment to a relatively small group of children. Family day care providers generally care for children from one or more families in the provider's home. Both regulated and unregulated homes surveyed often had one or more children in care who were related to the provider. On average, State-licensed homes had 7.9 children

in care, homes regulated by local or federal agencies had 5.4 children in care, and unregulated homes cared for 4.1 children. Homes reported caring for children from birth to age 14. The oldest child in a State-licensed home was 12 years old.

In-Home Providers. In-home providers most closely mirror parental care as they typically care for the children of one household only — in the children's own home. The children in care may be of any age.

Provider and Staff Qualifications

Survey results indicate that the number of staff and their qualifications and training varied by type of provider as well as among providers of the same type. Child care centers, on average, had more staff to care for children than providers in the "other children's programs" category (Table 2). It is important to note, however, that child care centers tend to care for younger children than "other children's programs," which may account for the difference in number of staff. Family day care providers and in-home providers typically worked alone, without assistants.

Table 2

Average Staff-to-Child Ratios by Type of Provider

Type of Provider	Number of Staff	Number of Children	Staff-to-Child Ratio
Child care centers	9.0	68.8	1:7.6
Other children's programs	12.5	142.0	1:11.4
Family day care homes Regulated	1.5	5.7	1:3.8
Unregulated	1.2	4.1	1:3.4

Source: JLARC and VCU surveys of providers.

Generally, the qualifications required of staff at child care centers were more stringent than those required of other providers. While staff at many other children's programs had to meet the same or similar requirements as did child care center staff, the percentage of programs having such requirements was much lower than the percentage of centers (Table 3). Because family day care providers are typically self-employed, there are no required qualifications, except those which parents may individually seek from providers. However, a majority of family day care providers had been trained in first aid or in cardiopulmonary resuscitation (CPR).

Table 3

Required Staff Qualifications

Qualifications for Staff	Percentage of Centers or Programs With Requirement: Child Care Centers	Other Children's Programs
Criminal records check	90%	39%
Tuberculosis test	96%	50%
Specific education level	81%	71%
Previous experience	70%	60%
Be of minimum age	79%	67%
Completion of child-care-specific training	59%	50%

Note: Columns do not add to 100 percent because categories are not mutually exclusive.

Source: JLARC staff surveys of providers.

Many family day care providers also had some child care-related training either in high school, college, or through a workshop sponsored by private or government agencies.

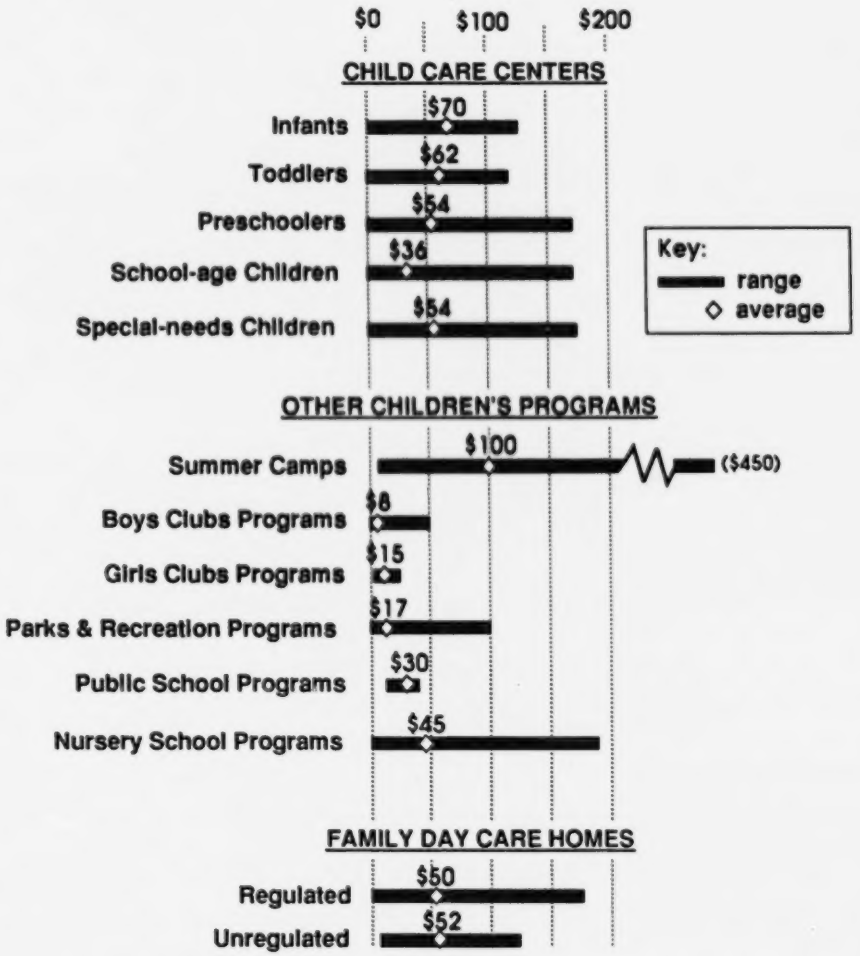
Qualifications for in-home providers are those specified by the parents and occasionally the private or non-profit agency which places the provider. According to the International Nanny Association, most in-home providers are not required to have any special training before providing care. Most placement agencies contacted reported that individuals placed have to meet very few, if any, requirements. Some agencies do not even check the references given. A few placement agencies, however, do require their providers to meet high standards, including a criminal records check.

Charges for Care

Surveyed providers and programs varied considerably in their charges for care and services (Figure 5). Child care centers generally charged fees based on the child's age or needs. Generally, care for infants and toddlers was most costly in centers. Fees for care at other children's programs differed according to the sponsor

Figure 5

Weekly Fees Charged by Various Providers



Source: JLARC and VCU surveys of providers.

and type of program offered. The widest range in cost was at summer camps, where the weekly fee ranged from $10 to $450. Family day care providers typically charged the same fee for all children in care, regardless of age (except for the part-time care of school-age children before and after school) or special needs of the children. The differences in charges reported by regulated and unregulated family day care providers were minimal. Fees for in-home providers are negotiated with the parents who employ the provider. Most of the provider types also reported providing care at no cost in some situations.

Flexibility of Scheduling Care

Although nearly all providers and programs surveyed reported offering services five or more days a week during morning and afternoon hours, some had more flexible schedules than others (Table 4). Almost all child care centers provided full-time care consistent with a normal work week — during the morning and afternoon. However, less than 20 percent of centers provided care during any evening hours. The schedule for other children's programs was more varied than that for centers. Fewer of these programs — although a clear majority — provided care in the mornings and afternoons, but many more offered evening or overnight care.

Family day care providers appeared to be more flexible than centers in their schedules as well, with a greater percentage offering care during the evening or overnight as needed. In-home providers arrange their schedules to suit their employers, generally caring for children between 40 and 60 hours each week, according to the International Nanny Association.

Most providers and programs reported that the majority of children in care attended five days a week for eight or more hours each day on average. Although the average number of hours for daily attendance within other children's programs was eight hours overall, the length of attendance varied much more among these programs than for any of the other providers. For example, daily attendance ranged from an average of three hours for Boys Clubs and public school extended day programs to an average of 23 hours for summer camps. The average for summer camps was high because 87 percent of them offered overnight camping.

Table 4

Flexibility in Hours Care Was Available

	Percentage Offering Care			
Type of Provider	Morning	Afternoon	Evening	Overnight
Child care centers	94%	96%	19%	<1%
Other children's programs	86%	77%	28%	17%
Family day care homes Regulated	95%	91%	53%	12%
Unregulated	91%	98%	23%	2%

Note: Rows do not add to 100 percent because categories are not mutually exclusive.

Source: JLARC and VCU surveys of providers.

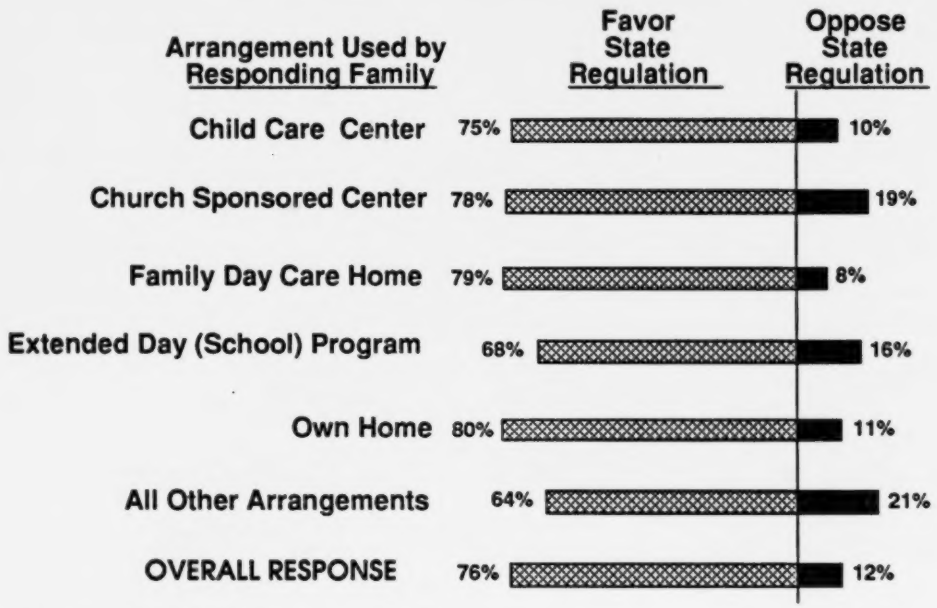
PARENTAL SATISFACTION WITH CHILD CARE

For the most part, providers of all types appear to provide adequate care for children in Virginia. When asked about their satisfaction with the quality of care their children currently receive, 96 percent of parents reported on the JLARC/VCU survey that they were satisfied. However, a significant portion of parents reported having some problem in the past. For example, 36 percent reported having difficulty finding care because the quality of care by some providers was not what they wanted it to be. Approximately 27 percent reported that they had changed their child care arrangement in the past because of dissatisfaction with its quality.

While parental satisfaction with the quality of care was high, so was the desire to have the State involved in regulation of day care providers. Overall, more than 76 percent of parents responding to the JLARC/VCU survey felt that the State should regulate child day care providers. This support for State regulation was fairly consistent among parents using all different types of child day care (Figure 6). It appears parents recognize that even when the care provided to children is good, because children are vulnerable, the State needs to provide for the protection of children when not in their parents' care.

Figure 6

Family Opinions About Regulation of Child Day Care



Source: JLARC/VCU survey of parents.

III. Regulation of Child Day Care in Virginia

The State has regulated child day care in some form for more than 65 years. Today, as in the past, licensure of day care providers is the form of regulation used by the State. Through licensure, the Department of Social Services (DSS) regulates 1,275 providers of child day care services.

An assessment of the current regulatory system shows that substantial adjustments are necessary. While the child day care industry has changed and become more dynamic to meet the increasing need for day care services, the State's regulatory structure has not changed to reflect the diverse types of care available. As a result, the regulatory system no longer provides adequate protection for many children in care.

As many as 80 percent of Virginia children in child care arrangements are not covered by State regulation (Figure 7). This is in striking contrast to the findings of the JLARC/VCU survey of parents — 76 percent of parents with children in care favored State regulation. During this review, three primary problems with the regulatory system were identified.

First, there is no clear goal for the regulatory system; that is, it is not clear from the current statutory and regulatory framework what the State seeks to achieve from regulation. The lack of a clear goal has contributed to a regulatory system that has evolved in a piece-meal fashion, and may be inconsistent and inequitable in its application.

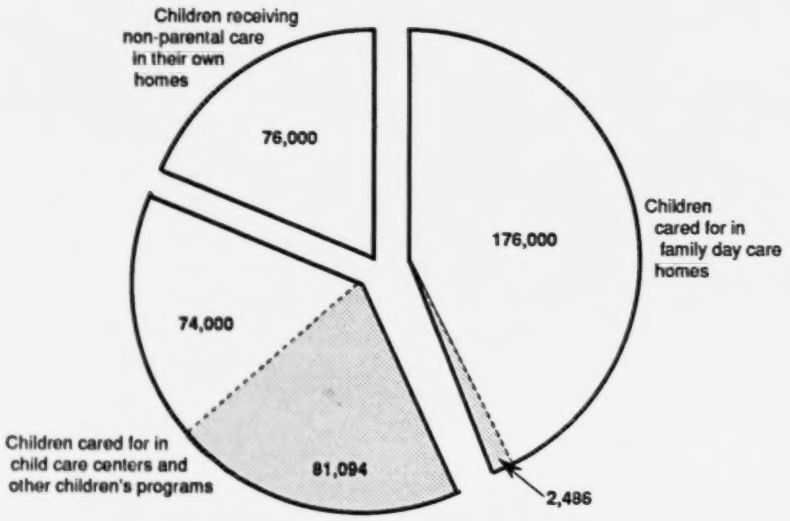
While parent demand for good quality child day care has increased over the years, the trend has been to exclude more providers from State regulation. The exclusion of recognized providers raises questions about the adequacy of protection for Virginia's children in day care. Further, many licensed providers perceive the regulatory system as being unfair because it excludes competitors who are providing identical care.

Second, the regulatory system is based on definitions of child day care that do not recognize the diversity of care actually provided. Thus, while some types of care are regulated, other types of care are not because they do not fit current definitions.

Third, the system relies on licensure to regulate providers of child day care. There is little flexibility in the application of licensing standards, and certain standards appear to be inappropriate for the care provided by some segments of the industry. Because of the current statutory and regulatory framework, a system that should be flexible and dynamic is in fact rigid and stagnant.

Figure 7

Estimated Number of Children Currently in State-Regulated Child Day Care 1989


Children receiving non-parental care in their own homes
76,000
Children cared for in family day care homes
176,000
74,000
Children cared for in child care centers and other children's programs
81,094
2,486

Key:

☐ Child day care *not currently regulated* by the State.[1]

▨ Child day care *currently regulated* by the State.[2]

[1] JLARC staff estimates.

[2] Actual DSS capacity figures.

Source: JLARC/VCU survey of parents, U.S. Bureau of the Census population estimates, and JLARC staff analysis of DSS licensing data.

THE REGULATORY SYSTEM

In Virginia, the regulatory system for child day care is based on statutory definitions for child care centers and family day care homes. These definitions, and the exceptions to regulation included in them, are the sole basis for determining which providers are subject to State regulation.

The Commonwealth regulates child day care through licensure, although some child care centers that are excepted or exempted from licensure are "regulated" by the State through certification or an exemption process. Through the licensure process, the State has established standards for day care providers. The State Board of Social Services establishes standards for family day care homes and family day care

systems. In 1987, the General Assembly created the Child Day-Care Council to establish standards for child care centers only. It is the responsibility of the Department of Social Services to license child day care providers and monitor compliance with standards. Licensure of centers also requires certain inspections by other State and local agencies. In addition to State regulation, local and federal agencies provide for some regulation of child day care providers.

Evolution of the State Regulatory System

The General Assembly first mandated the licensure of child day care in the 1920s. In 1922, the Children's Bureau was created, under the Department of Public Welfare. Duties of the Bureau included supervision and annual licensing of private child-caring institutions and agencies, including day nurseries.

Thereafter, the State's regulatory actions were shaped by a variety of different forces and interests. The first major legislative action occurred during World War II, with the enactment of the Licensing Act of 1942. The act responded to public concern about the welfare of children whose mothers worked during the war.

Although legislative interest in child day care subsided after the war, it reappeared in the late 1960s. (A listing of the key legislative actions involving day care regulation since 1968 appears in Exhibit 2.) The revisions to the child day care regulatory system in the 1960s and 1970s significantly altered the face of regulation in Virginia. In 1968, the General Assembly rewrote the State law governing licensing procedures for child welfare agencies, allowing the first exceptions to licensure.

Since 1968, statutes have been amended to exclude various day care providers and children's programs from the definitions of child care center and family day care home, and hence from regulation. In 1968, the definition of family day care home for licensing purposes included any home providing care for one or more unrelated children. In 1972, the law was changed to allow a home to care for as many as three unrelated children without being licensed. Subsequent amendments in 1977 and 1987 further restricted the homes subject to licensure by the State. Today, homes are not licensed until they care for at least six unrelated children.

Similarly, child care centers subject to licensure have been limited according to their sponsorship. Current regulatory treatment for centers sponsored by governments, hospitals, and religious institutions differs from that for other centers. Government-sponsored care was excluded from licensure when the day care statutes were rewritten in 1968. In 1975, hospital-sponsored centers were excepted from licensure. Religiously-sponsored centers were given the option of applying for an exemption to licensure in 1979.

Exhibit 2

Recent State Legislation Regulating Child Day Care

Year Enacted	Description of Legislation
1968	Rewrote State law governing licensing procedures; required annual licensure of child care centers and family day care homes except for those operated by State, county or city government authorities; defined child care centers required to be licensed; excepted summer camps, public schools, and part-time nursery schools from licensure; and licensed family day care homes if any unrelated children present.
1972	Excepted occasional care and private schools from licensure and licensed family day care homes if more than three unrelated children present. Gave the Commissioner of Social Services authority to investigate and require homes with three or fewer children present to be licensed if complaints about these homes were made.
1975	Excepted hospital-sponsored centers and Sunday schools from the definition of child care center.
1977	Increased from three to five the number of children allowed in unlicensed family day care homes and excepted homes serving only children placed by local social services departments.
	Allowed the State Board of Social Services to create rules and regulations for a registration system for family day care homes (expired in 1980).
1979	Exempted child care centers run by religious institutions.
	Defined a family day care system for purposes of licensure.
1984	Removed the investigative authority granted to the Commissioner of Social Services over family day care homes not subject to licensure.
1985	Established requirements for pre-employment criminal records checks for child care center licensees and their employees.
	Removed the licensing exception previously granted to occasional care facilities.
1986	Required hourly occasional care services to be licensed as child care centers.

Exhibit 2 (cont.)

Year Enacted	Description of Legislation
1987	Created the Child Day-Care Council, which was charged with developing new standards for centers. Authorized the school board for the City of Virginia Beach to establish before- and after-school programs for elementary and middle school students. Increased from five to ten the number of unrelated children allowed in unlicensed family day care homes, if five are in before- and after-school care. Increased the number and types of crimes screened in criminal records checks; required criminal records checks on family day care home providers and family day care systems and allowed a sworn statement disclosing possible convictions or pending charges in addition to criminal records checks.
1988	Authorized the school boards in Loudoun and Prince William counties and the cities of Manassas, Manassas Park, Norfolk, and Richmond to establish before- and after-school programs for elementary and middle school students. Excepted from licensure family day care homes in Caroline and Mathews counties that have ten children in care if five are of school age (expires January 1990).
1989	Required vacation schools and summer camps to register with the Commissioner of Social Services and exempted religiously-sponsored schools and camps. Authorized the school boards in Franklin and Patrick counties and the cities of Bristol, Danville, and Portsmouth to establish before- and after-school programs for elementary and middle school students. Created the Virginia Council on Child Day Care and Early Childhood Programs to coordinate, plan, and evaluate day care and early childhood programs at the State level.

Source: JLARC staff analysis of the *Acts of Assembly* and the *Code of Virginia*.

Other recent changes have included the creation of the Child Day-Care Council to promulgate child care center regulations, authorization for additional school boards to sponsor before- and after-school programs, and the creation of the Virginia Council on Child Day Care and Early Childhood Programs to coordinate child day care and developmental programs for at-risk four-year olds.

Regulation at the State Level

The State regulates child day care by mandatory licensing of statutorily defined child care centers and family day care homes. In addition, the State licenses family day care systems and certifies government-sponsored child care centers on a voluntary basis so that they can receive public funds.

Figure 8 shows the capacity of State-licensed care in each locality in Virginia. Licensed family day care homes and licensed or certified child care centers can provide care to a maximum of 83,580 children.

Statutory Definitions of Child Day Care Providers. The *Code of Virginia* defines two types of child day care providers that must be licensed by the State—child care centers and family day care homes. The *Code* specifically exempts or excepts some child care centers from licensure, generally because of sponsorship. In addition, some family day care homes are excepted from licensure on the basis of the number of children in care.

Although "exemption" frequently refers to all groups who do not fall under regulation, in Virginia exemption applies only to religiously-sponsored child care centers. "Exception" and "exclusion" refer to excluding all other types of providers.

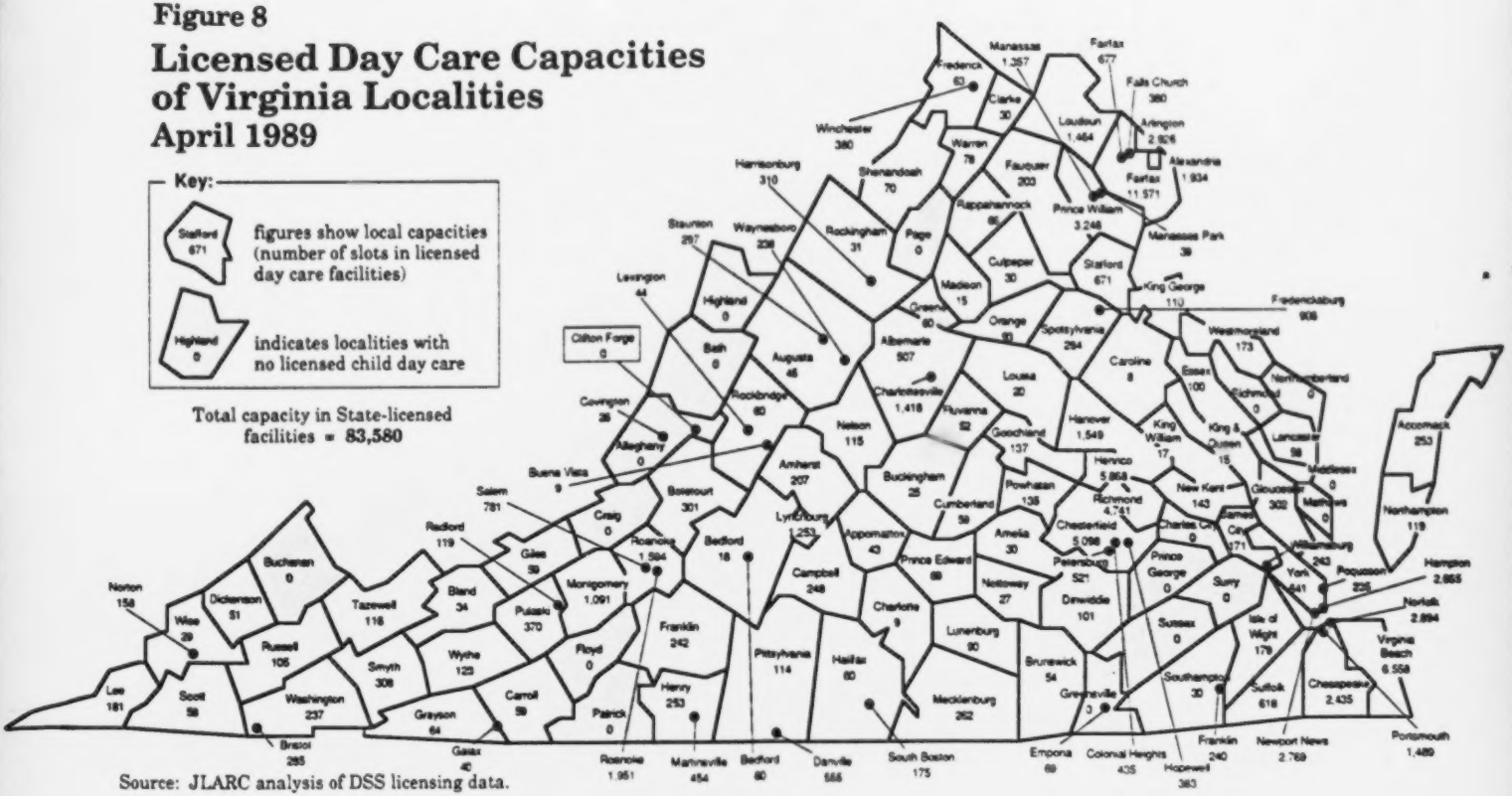
The *Code of Virginia* defines child care centers as facilities that provide care, protection, and guidance to a group of children separated from their parents or guardian during a part of the day. The primary differences between child care centers and family day care homes are the number of children in care and the setting where care is provided. Typically, centers care for larger numbers of children than homes and are operated in facilities other than homes. However, in most cases, family day care homes that care for ten or more children (other than the provider's own children) are considered centers and must be regulated as such according to licensing standards.

Several exceptions to regulation of child care centers are also specified in statute.

- If a facility is licensed as a summer camp, it does not have to be regulated as a child care center.
- Public and private schools are not licensed as child care centers unless the private school operates a center outside of regular classes.

Figure 8

Licensed Day Care Capacities of Virginia Localities April 1989



Source: JLARC analysis of DSS licensing data.

- Educational programs for preschool children are not regulated as child care centers if they meet certain age and hour limitations.

- Hospitals that provide on-premise day care for their employees are not subject to regulation.

- Sunday schools and other facilities operated by religious institutions so that parents or guardians may attend religious services are not considered child care centers.

- Child care centers sponsored by government entities do not have to be licensed.

The *Code of Virginia* defines a family day care home as a private home in which a provider cares during a part of the day for six or more children who are unrelated to the provider. Licensing standards require that no more than nine children unrelated to the provider be provided care on a regular basis in a family day care home unless the provider meets child care center standards and is licensed as such. Although there is no limit on related children in determining subjectivity to licensure as a family day care home, once ten or 11 children (other than the provider's own children) are in care, the home must be licensed as a child care center. (As many as ten children can be kept in a family day care home if at least five of them are of school-age and kept before and after school only.)

Three exceptions to this requirement are made in §63.1-195 of the *Code of Virginia*. First, family day care homes that accept children exclusively from local departments of social services do not have to be licensed. Second, if a home has been approved by a licensed family day care system, it does not also have to be licensed by the State. Finally, homes may accept up to ten children without being licensed if at least five of these children are of school-age and are in the home immediately before and after school each day for periods of three hours or less. An exception to the time limitations has been made for homes in Caroline and Mathews Counties because of shortages of care. Until January 1, 1990, these homes may have school-age children in care during normal school hours (when school is closed for holidays, for inclement weather, and during the summer) without being subject to State licensure.

Establishment of Standards. The regulatory standards used by DSS to license child care centers and family day care homes are promulgated by the Child Day-Care Council or the State Board of Social Services. Historically, all licensing standards for child day care had been promulgated by the State Board of Social Services. In 1987, however, the Child Day-Care Council was created by the General Assembly and charged with establishing new child care center licensing standards that were more responsive to the problems of these providers. Emergency regulations for child care centers were promulgated by the council on July 1, 1988. These standards were revised and repromulgated effective July 1, 1989.

Licensing standards for family day care homes and family day care systems continue to be promulgated by the State Board of Social Services. The board also promulgates the standards that are used by local departments of social services to approve family day care providers, including relatives and in-home providers, who care for children receiving public funds, primarily Social Services Block Grant assistance.

The Administrative Structure for Licensing. The Department of Social Services regulates child day care that must be licensed by law. The department also administers the exemption process for religiously-sponsored child care centers. In addition, DSS "certifies as licensed" any exempt or excepted facility as a condition to receive funds allocated through the department. Currently all of the certified programs are government-sponsored child care centers.

Thirty-two licensing specialists in seven regional DSS offices are responsible for licensing and certifying child care centers and for licensing family day care homes and family day care systems. Licensing specialists perform all licensing activities such as inspections of facilities and technical assistance to providers.

The seven regional offices report through two district offices, in Roanoke and Richmond, to the central office of the DSS Division of Licensing Programs in Richmond. Among the duties of the Division of Licensing Programs related to child day care are the establishment and interpretation of regulatory policies for child day care licensing, approval and revocation of licenses, review and approval of requests for variances to licensing standards, administration of the exemption process for religiously-sponsored child care centers, preparation of the interpretative handbooks for licensing standards promulgated by the Child Day-Care Council or State Board of Social Services, staff support for the Child Day-Care Council, and operation of provider support services and programs.

Licensure of Child Care Centers. Licensure is mandatory for all child care centers not specifically excepted or exempted by the *Code of Virginia*. As of March 1989, 978 centers were licensed by DSS. Licensed centers had a capacity of 80,546 children in April 1989. The licensing standards for child care centers include requirements for personnel, administration, staffing, supervision, physical plant, admission policies and procedures, special care provisions, programs and services, and emergencies.

To obtain a license, centers must also satisfy all State health and fire requirements. Annual inspections are made by local health department officials. Generally, State or local fire marshals inspect centers on an annual basis. In addition, centers are inspected by DSS licensing staff at least two times each year. One of the inspections must be an unannounced visit.

Because government-sponsored centers are excepted from licensure but must be regulated to receive federal funds, DSS also "certifies as licensed" these

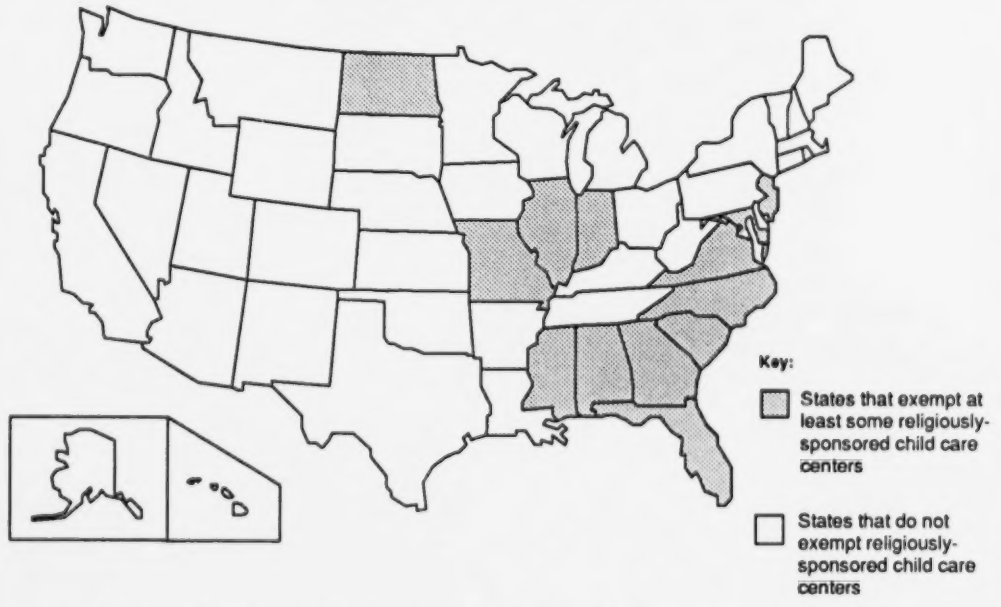
centers on a voluntary basis. In order to be certified by the State, government-sponsored child care centers must satisfy the same licensing standards and health and fire requirements as licensed child care centers. As of March 1989, 15 centers were "certified as licensed" by DSS. Two of these centers were in the Richmond region, two in the Tidewater region, three in the Northern Virginia region, and eight in the Southwest region. These certified centers had a capacity of 548 children in April 1989.

Regulatory treatment of religiously-sponsored child care centers also differs from other centers. Religiously-sponsored centers must either apply for an exemption to licensure or complete the licensure process. Virginia is one of 13 states which provide some form of exemption for religiously-sponsored centers (Figure 9).

The exemption process, as outlined in §63.1-196.3 of the *Code of Virginia*, generally includes the completion of health and fire safety inspections and self-certification of staff health and staff-to-child ratios. In addition, these centers are to provide DSS with a statement of tax-exempt status and documentation of public notice of their exempt status. Exempted centers are not subject to inspections or monitoring by DSS licensing staff. As of April 1989, there were 167 religiously-sponsored exempt centers with a capacity of 12,302 children in care. An additional 133 religiously-sponsored centers have chosen to be licensed by DSS.

Figure 9

States That Exempt Religiously-Sponsored Child Care Centers


Key:
States that exempt at least some religiously-sponsored child care centers
States that do not exempt religiously-sponsored child care centers

Source: JLARC staff analysis of The National State of Child Care Regulation 1986, Table 1B.

Licensure of Family Day Care Homes. There were 293 family day care homes licensed by DSS as of March 1989. These homes had a licensed capacity of 2,486 children. In order to be licensed, homes must comply with licensing standards that include requirements related to personnel, the household, physical environment and equipment, care of children, physical health, and records. Family day care homes are inspected at least two times a year by DSS licensing staff (one inspection is unannounced) but are not typically subject to other inspections such as fire or health.

Licensure of Family Day Care Systems. Family day care systems were first defined and authorized by the General Assembly to approve family day care homes in 1979. Family day care systems are licensed by DSS as alternate regulatory bodies for family day care homes. These homes can be those that meet the State's definition of a family day care home or those that care for five or fewer children. There were four family day care systems licensed by the State at the end of March 1989. (At one time, there were as many as 11 family day care systems in Virginia. Liability concerns and an informal Internal Revenue Service ruling that member homes had to be treated as employees contributed to a number of systems closing.) The four systems, which are all located in the Hampton Roads area and Northern Virginia, had 222 member homes as of February 1989. Of the 222 member homes, 95 are approved to care for fewer than six children. These system-approved homes had a capacity of 1,499 children.

Systems are required to apply the general standards for family day care homes and to promulgate their own approval standards for the homes they monitor. Licensing standards for systems cover the organization, personnel, and administration of the system itself and the services the system must provide to children, families, and member homes. Family day care system staff must monitor approved homes four times a year, with at least two visits unannounced. Though they are administrative organizations, systems are also inspected by DSS two times a year, with one visit unannounced.

Licensing specialists have noted that system-approved homes are considered "quality family day care," because the systems' standards are typically designed to promote quality care by member homes. JLARC staff field visits confirmed that these homes provided the safest care in terms of observable safety and health problems.

Regulation at the Local Level

Local governments and agencies may also be involved in the regulation of child day care. Local departments of social services may approve family day care homes that do not meet the State's definition of a family day care home or those that have been excepted from licensure, but must be regulated in order to receive public funds for the children in care. A few localities also regulate child day care by establishing registration, voluntary approval, or resource or referral systems for other family day care home providers operating within their jurisdictions.

Approval by Local Departments of Social Services. In order to receive public funds, such as the Social Services Block Grant (SSBG), the federal government requires that family day care providers be approved by a State authority. Virginia has shifted this responsibility to local departments of social services. Local approval is sometimes necessary because providers may care exclusively for children who receive public funding thus making the provider excepted from State licensure. In other instances, the provider may care for five or fewer children and thus not be subject to State licensure.

As noted earlier, the standards local departments of social services use to approve these providers are established by the State Board of Social Services. A DSS survey of local departments of social services in July 1988 found that 1,863 family day care homes and 281 in-home providers were approved by local departments statewide.

Regulation by Local Governments. Regulation by local governments has taken multiple forms. Some localities have chosen registration while others use resource and referral systems. At least three localities currently register family day care homes within their jurisdictions. Registration is mandatory for homes in the City of Alexandria and the County of Arlington while the City of Falls Church has voluntary registration. Registration by local governments typically requires a provider to submit biographical information, references, a criminal records check or Child Protective Services Central Registry check, and may also include a home health and safety inspection. Loudoun County has a voluntary approval system for family day care homes that is similar to registration.

In addition, the counties of Fairfax and Prince William operate resource and referral systems. To be listed on the system, providers must meet certain requirements such as letters of reference and a Child Protective Services Central Registry check.

Regulation at the Federal Level

The federal government also regulates some child care centers and family day care homes in Virginia. Child day care facilities on federal property are not under the regulatory jurisdiction of the State unless the federal government grants concurrent jurisdiction. Thus, the four military branches and other federal agencies regulate some child day care in Virginia. The U.S. Department of Agriculture (USDA) also regulates child day care facilities that are not otherwise regulated by the State to permit these providers to receive Child Care Food Program funds.

Regulation by Military Authorities. Military authorities do not have a single regulatory form for their treatment of child day care facilities. Instead, the Department of Defense has issued a general policy, and each service has its own implementation instructions. Each branch of the military has a separate set of

standards for family day care homes. The Army, Navy, and Marines refer to their regulation of family day care homes as certification, while the Air Force refers to its regulation as licensure.

Military authorities operate or regulate child day care facilities on 15 installations in Virginia. There are 18 child care centers or preschools on these bases and 353 family day care homes. The combined capacity of these military-regulated facilities as of March 1989 was 3,447 children.

Regulation by Other Federal Agencies. Other federal agencies also regulate child day care facilities on federal property in Virginia. For instance, the National Aeronautics and Space Administration (NASA) regulates a child care center with a capacity of 60 children at the Langley Research Center in Hampton. The Langley facility developed its own set of regulatory standards, because no NASA standards existed.

Regulation by the U.S. Department of Agriculture. The U.S. Department of Agriculture approves family day care homes through 21 sponsor associations in the State. Child care centers may be approved by these associations or by other agencies. Alternate approval allows homes and centers that are not regulated by State or local agencies to participate in the Child Care Food Program, which is part of the National School Lunch Act. This program reimburses providers for food expenses.

Alternate approval includes annual inspections by local health and State or local fire officials, monitoring by sponsor associations or approving agencies three times a year, and compliance with basic health, safety, nutrition, and sanitation standards. In addition, USDA-approved providers must attend annual training which typically addresses topics related to nutrition.

According to an August 1988 study by USDA, food reimbursement funds from this program account for almost 35 percent of the gross income for the average family day care home provider. As of March 1989, there were 2,784 family day care providers in Virginia participating in the Child Care Food Program. Of these providers, 998 were regulated only by USDA. Fifty-three localities have no family day care providers that receive USDA funds. In addition, 68 child care centers in Virginia are regulated only by USDA.

Assessing the Consequences of the Regulatory System

The regulatory framework for child day care in Virginia could be an important means for protecting children when they are not in the care of their parents. However, Virginia's regulatory policy for child day care is neither clear nor comprehensive. Although the protection of children in care appears to have been an unstated goal for the regulatory system, it is not clear that it has been the primary one. In fact, no goals for the State's regulation of child day care have ever been articulated. Con-

sequently, day care regulation in Virginia is too narrowly applied, is sometimes inflexible, and in some instances appears to be inappropriate for the providers regulated.

THE SCOPE OF REGULATION IS NARROW

Virginia statutes have not specifically defined "child day care" because there is no comprehensive policy for regulation. Instead, the *Code of Virginia* defines two types of day care providers for regulatory purposes: "child care center" and "family day care home." At one time in the past, this definitional approach may have served Virginia well. However, in recent years it has become clear that there are problems with the definitions as set out in §63.1-195 of the *Code of Virginia*.

First, these statutory definitions exclude from regulation some recognized providers of child day care services. Second, some other providers are not regulated because they have not been recognized as traditionally providing day care services. In short, while the types of providers of day care have changed, the State's definition of child day care has not expanded to encompass them. As a result, many providers of care are not regulated because they do not fit the traditional definitions.

Exclusion of Recognized Day Care Providers from Regulation

Since 1968, when the current regulatory system was established, there has been an increasing number of exclusions from regulation for child day care providers. Various individuals and facilities that were once required to be licensed are now excepted or exempted from licensure because of the number of children in care or the sponsorship of the program. Excluding recognized providers of day care from regulation, because of the number of children in care or the type of sponsorship, raises questions about the adequacy of protection for children as well as the equity in the treatment of providers. When problems with care occur, there is recourse for parents in licensed centers or homes, but there is little recourse in excluded centers or homes.

Problems with Granting Exceptions. For the State to provide any real protection for children in day care, it must be able to monitor providers of care. When problems with providers or facilities are serious, the State must also be able to prohibit them from providing day care services. However, the current exceptions to regulation do not permit the State to monitor the majority of providers offering care, or to prohibit them from operating when necessary.

Some excepted providers are certified by the State or approved by local departments of social services so that they may receive public funding. Although these providers are monitored for compliance, they cannot be forced to discontinue operating if problems are found. The only regulatory sanction available is the loss of public funds.

Local authorities can investigate an excepted caregiver, but these agencies do not look at group child care practices. Instead, local agencies inspect for health code violations or fire safety problems, or determine if child abuse or neglect has occurred.

Problems with excepted care have been documented by DSS, by family day care systems, and by JLARC staff during field visits. A few examples illustrate how exceptions to regulation can place children at risk:

> *In 1986, a child drowned while in the care of an illegally operating family day care provider. A 16-month old child toddled from an unlocked door to the provider's pool. The local department of social services found the operator guilty of child neglect and brought the home to the attention of DSS. However, the provider was able to continue operating because the number of children in care dropped from six to five, and the provider was no longer subject to State regulation.*
>
> * * *
>
> *A family day care system denied a license to a home provider in 1988 after learning that the Child Protective Services Central Registry had three "founded" complaints against her for child abuse. (For a complaint to be termed "founded," local social services workers must find by clear and convincing evidence that abuse or neglect actually occurred. Criminal prosecution does not always follow such a finding.) However, this provider is now legally caring for fewer than six children.*
>
> * * *
>
> *JLARC staff accompanied a U.S. Department of Agriculture inspector on field visits to monitored homes. The USDA inspector monitors for the Child Care Food Program and performs some basic health, safety, and sanitation checks while on site. During one of the visits, the actions of a toddler alerted staff to two separate safety problems. First, the toddler was playing with a bottle of bleach. The provider stored the bleach when she was informed of the problem. Second, the toddler attempted to touch a wood stove while in use. The provider grabbed the child's hand before he could touch the hot stove. When asked to enclose the stove, the provider placed a barrier around it.*
>
> * * *
>
> *JLARC staff visited an unregulated family day care provider. During the visit, a four-year old child and a toddler were sleeping*

in a basement room unsupervised. The four-year old was sleeping on a carpeted floor. A second toddler was unsupervised in another room, lying in a playpen and drinking a bottle. This lack of supervision would have been considered a violation of standards had this provider been licensed.

In each of these cases, the parents of children would have little recourse except to find another provider. Often, however, parents may not even be aware of the problems. Because these providers are not regulated by the State, it cannot intervene on behalf of children that appear to be at some risk.

Problems with the Exemption Process. Many religiously-sponsored child care centers are licensed by the State. As of March 1989, 133 such centers were licensed, while 167 were exempt. The care in both licensed and exempt centers appears to generally be good. For example, two exempt centers are accredited by the National Association for the Education of Young Children. In addition, in JLARC staff visits to religiously-sponsored centers, the care in some exempt centers was found to be comparable to that in licensed centers. The exempt centers were cooperative, and provided complete access to their facilities and programs to JLARC staff.

However, while many religiously-exempt centers provide good care, as with all other types of care some do not. The problem with the exemption process for religiously-sponsored centers is that it creates an illusion of protection by the State when in fact little protection really exists. The Department of Social Services must grant centers exempt status if they comply with the requirements for exemption, even when there are known problems at a given center. In addition, DSS has no authority to monitor religiously-exempt child care centers to ensure protection of the children cared for therein. Although the *Code of Virginia* outlines other mechanisms for monitoring these centers, some of the provisions for exemption are unenforceable and others go unenforced.

The limit on the authority of DSS to effectively regulate these centers is illustrated by the example of several religiously- sponsored centers which had either been licensed or had begun the licensing process but changed to exempt status between July 1, 1987 and April 1, 1989. Four of these centers had been denied a license and another three were conditionally licensed — which means that the facility did not meet standards for initial licensure but was given the opportunity to demonstrate compliance while operating. Even though some of these centers could not meet the requirements for licensure, DSS had to grant them exempt status provided they complied with several basic requirements.

According to §63.1-196.3 of the *Code of Virginia*, religiously-sponsored child care centers may be exempted from licensure if they submit a statement of intent to operate and other documentation attesting that certain health, safety, and supervision standards have been met. The Department of Social Services does not

have the authority to validate that requirements have been met through on-site inspections. The department must accept the information that is provided. For example, DSS cannot enter an exempted facility to observe supervision of children. The department has no way to verify staff-to-child ratios. These ratios are simply reported by staff of the exempt center. In a visit to one exempt center, JLARC staff noted that the center did not appear to observe the child-to-staff ratios reported to DSS.

In addition, DSS is not authorized to investigate complaints about exempt centers. Health and fire safety complaints can be investigated by local health departments and State or local fire officials. Even though local departments have the authority to investigate, at times they appear reluctant to take action because these centers are exempt from licensure. For example, JLARC staff found during field visits that two exempt centers did not have any fire alarms or extinguishers.

The *Code of Virginia* makes local departments of social services responsible for investigating complaints about violations of the exemption requirements as well as complaints involving child abuse and neglect. There have been difficulties in getting complaints investigated, however. While some local departments readily investigate complaints, many have contended that they do not have the authority to enter these centers or that the complaints do not meet their definitions of abuse and neglect and cannot, therefore, be investigated.

When complaints are investigated, there seem to be two problems. First, findings are often not reported to the religious exemption supervisor at DSS. Second, while many complaints in licensed care are classified as "founded," there appears to be a pattern of determining that complaints in religiously-exempt centers are "unfounded." For example, three separate complaints regarding the use of objects to strike children were received against one religiously-exempt center during a three-year period. Even though the center director admitted using straps, sticks, and shoes to strike children as a method of punishment, none of the complaints was determined "founded" by local child protective services investigations. In another instance, a local investigation concluded that a center's staff-to-child ratios were in violation of statutory requirements and that the center was caring for children younger than permitted by the State Fire Marshal. However, the child protective services worker refused to verify her observations in writing. Instead, she classified the complaint as "unfounded."

Inadequacies in the exemption process were also found by JLARC staff during a file review of DSS cases dealing with exempt centers and centers which had not complied with the exemption process. A number of incidents were noted in which the department's inability to investigate exempt centers has placed children in care at risk. Three cases were selected to illustrate this problem:

> *In 1981, a licensed child care center, operated by a secular organization, altered its corporate structure — for the apparent purpose*

of avoiding licensure requirements. The Department of Social Services had concerns about the director's ordination as a minister and, hence, the legitimacy of the center's claim for exemption. The "church" that ordained the director advertised in Virginia newspapers that credentials as a legally ordained minister could be obtained by sending a $3 offering to a California address. However, since the organization in question had been granted tax-exempt status, the center was able to qualify as religiously-sponsored.

At the time this center began the exemption process, a child abuse complaint against the director was being investigated by local child protective services authorities. However, DSS had no authority to investigate since a letter of intent to complete the exemption process had already been submitted. The local investigation determined that there was reason to suspect abuse. The director's name was purged from the central registry, however, because she claimed that she had not been at the center on the date the abuse took place.

DSS has been informed of subsequent child abuse and neglect complaints against this center at the rate of one or more each year. However, the State does not have the authority to investigate these complaints except through the local department of social services or child protective services agency. Many of these complaints have focused on disciplinary practices. For example, complaints have alleged punishment of toileting accidents by forcing the child to sit bare-bottomed on a table during lunch, locking children in closets, and leaving a three-year old alone in a room for three hours as "time-out."

The local child protective services agency has investigated a sexual abuse complaint at this center. Although the agency concluded that the employee's behavior was suspect and the child's account credible, the case was closed as unfounded. Since the individual was no longer employed at the center, the information uncovered was deemed "irrelevant."

Other complaints about this center have alleged problems with staff-to-child ratios, fire safety, sanitation, and nutrition. The only allegation in violation of the exemption requirements is that the staff-to-child ratios have been inadequate. While local fire and health departments could investigate the other complaints, jurisdictional disputes and contentions that the violations were not serious enough kept these departments from investigating.

DSS has no authority or justification to take action on this case because this facility has been timely in completing all the requirements for exemption. This center is still in operation.

* * *

One religiously-sponsored child care center has been operating without a DSS approved exemption since 1979. This is contrary to §63.1-196.3 of the Code of Virginia. *The minister of the church had contested the intrusion of even the exemption process on the basis of separation of church and state, and the center refused to comply with the exemption requirements.*

In 1981, 1985 and 1989, the Attorney General's Office was advised of problems with this center. The center had 50 infants in care, but had no direct access to the outside and no sprinkler system. This was in violation of the Uniform Statewide Building Code which states that at least one of these two requirements must be met when infants are in care. According to the local building inspector, the center "has never had a certificate of occupancy" but is working toward complying with building code requirements now. Although the center failed health inspections for food service in November 1988 and January 1989, the inspection was passed in April 1989.

While the center is now seeking to meet exemption requirements, as of August 7, 1989, the center still had not satisfied most requirements for exemption. Current approved inspections, the certificate of occupancy, staff health reports, and documentation of public notice were outstanding. DSS had been informed that the infants were being cared for in a safer location within the church pending structural changes.

* * *

In a similar situation, a center which qualified for exemption in 1979 has not met the requirements for exemption since that time. Nonetheless, it has continued to operate. The problem for this facility was that a certificate of occupancy had never been granted. Because of the time the building was constructed, there was a conflict about who had responsibility for the inspection — the State Fire Marshal or the local building inspector. Because this issue was not resolved, no one made the required inspection.

In March 1989, the local building inspector entered the facility for the first time. On inspection, he noted many violations and

indicated that the center would have two weeks to comply or the building would be condemned. As of May 5, 1989, the center was still working on compliance. This center cares for 125 children between the ages of two and five.

While problems can occur in any type of care, there is little recourse for parents whose children are in exempt centers. When a center is licensed, however, parents can rely on regulatory actions to address concerns. For example:

DSS denied a renewal license to a child care center due to health and safety concerns for the children in care. In its denial letter, DSS described the center as having a hole in the bathroom ceiling, roaches, hazardous fluids within children's reach, broken bookcases, and uncapped electrical outlets. The letter also contended that exposed electrical wiring was not fixed until the fire marshal gave the center 24 hours to correct the problem. In addition, center staff did not have the required criminal records checks and references on file.

During 11 monitoring visits to the center, licensing specialists found numerous violations of supervisory and safety standards; many were repeat violations. For example, licensing specialists found only two staff to supervise 53 napping children during a visit. Neither staff were within sight and sound of most children. Specialists visited the center two days later to determine compliance. However, they again found only two staff — both of whom were in the office, leaving the children unsupervised.

The center appealed the denial action, and both parties agreed upon a compromise position. The center was allowed to continue in operation under a number of restrictions and rules set forth in the agreement for a three-month period, including close monitoring by the Division of Licensing Programs. Since the center met the requirements and maintained compliance during this period, it was able to continue to be licensed.

Had the same problems occurred in an exempt center, DSS could not have investigated or taken any other action against the center to require it to correct the problems or discontinue providing care.

In addition, when a center is religiously-sponsored, licensing enforcement is not an effective tool because the center can change to exempt status. For example:

DSS denied the renewal application of one religiously-sponsored child care center's license in July 1987. Since first being licensed to operate a child care center in September 1978, this facility

received alternating provisional and annual licenses. At the time the renewal application was denied, the center was operating on a provisional license which had been issued in December 1986. The center acknowledged it had violated standards on an ongoing basis. Because it did not correct previously cited violations and also incurred other violations, the department denied the license.

While many of the violations at issue were relatively minor in nature, several were quite serious. On investigation, the licensing specialist found repeated violations of standards related to staff qualifications and training, staffing levels, and safety hazards. In addition, the center was not sufficiently prepared for emergencies and used unacceptable disciplinary methods.

The center appealed the denial of its license, and DSS received several letters in support of the center from the community. A hearing was held but the license was denied in accordance with the conclusion of the hearing officer. (According to statute, a provisional license cannot be renewed for a period longer than six successive months. At the end of the six-month period, an annual license must be issued or the application denied.) Because this center is religiously-sponsored, it has initiated the exemption process.

The current provisions of the exemption process would not address the nature of the problems for which this center had its application for licensure denied. DSS does not have investigative authority to confirm reported staffing levels or to check for certain safety hazards such as accessibility of household cleaning agents. The only action the Department of Social Services can take in response to problems with exempt centers is to seek an injunction against those that do not submit a statement of intent to operate or do not complete exemption requirements as required by the *Code of Virginia*.

Over the past nine years, even this action could not be used effectively. The exemption statute became effective on July 1, 1979. On September 12, 1979, a suit was filed in federal court challenging the constitutionality of the exemption (Forest Hills Early Learning Center v. William L. Lukhard). The constitutionality of the exemption was not settled until January 1989 when the U.S. Supreme Court denied the petition for writ of certiorari to review a lower court's decision. The lower court, the 4th U.S. Circuit Court of Appeals, had ruled on May 6, 1988, that the exemption was not unconstitutional. During the ten-year period of litigation, the Attorney General's Office was informed by DSS staff of a number of centers not in compliance with the exemption requirements. No enforcement action was initiated by the Commissioner of Social Services because the case had not been decided.

With the resolution of the Forest Hills case, the Commissioner requested enforcement of the exemption requirements against five centers in February 1989.

On April 19, 1989, the Attorney General informed the Commissioner that initial action would be directed toward one of the five centers. The Attorney General's Office sent this center a letter requesting compliance. The Attorney General's Office received a response on June 9, 1989 indicating the center would attempt to come into compliance. The adequacy of the response is being reviewed by DSS and the Attorney General's Office.

Exclusion of Related Children

Another problem with the current definition of a family day care home is that related children are not always included when determining the total number of children in care and subjectivity to licensure. Children who are related to the family day care provider are not currently counted when determining subjectivity to licensure as a family day care home. Related children (other than the provider's own children) are counted when determining whether a home should be licensed as a child care center, however.

The inconsistency in how related children are counted is confusing for licensing specialists and providers. One experienced specialist complained, in her survey response, about lacking jurisdiction to license a family day care provider who cared for as many as 16 children. JLARC staff later learned that the case was reviewed by central office at DSS, and it was determined that the provider was subject to licensure as a child care center.

Exclusion of Other Possible Providers of Day Care

The current statutory definitions result in only programs that can be categorized as child care centers or family day care homes being licensed. This is too narrow a focus because day care services can no longer be classified solely in terms of center or home care. Recent increases in the demand for child day care have prompted the provision of care through a number of different arrangements and settings. For example, a program sponsored by a private, non-profit organization may provide activities for low-income children during the day at little or no charge. Because such a program has not traditionally been considered a child care center, it would not currently be evaluated to determine if it should be licensed as a child day care provider.

An additional example of a program not recognized as day care is nursery schools. In Virginia, nursery school programs are specifically excepted from the definition of child care center even though they are generally considered a form of day care by other states. Virginia excludes these programs from day care regulation because of their educational focus and the number of hours children are in care each day. However, in JLARC staff visits, most of the other providers appeared to include an educational component in their programs. The programs offered by nursery

schools are often indistinguishable from child care centers except in the hours care is provided. To qualify for the exclusion, nursery schools are limited in the number of hours children can attend each day. However, child care centers are not limited in the number of hours they operate.

GREATER FLEXIBILITY IS NEEDED

Virginia uses licensure to regulate child day care. Because the licensure process is guided by the definitions of family day care homes and child care centers, it is inflexible in its application. For example, family day care providers who do not care for at least six children who are unrelated to them cannot be licensed even if they voluntarily request it. Thus, the current definitions and subsequent licensure of only defined providers has left a large segment of the day care industry unregulated. Federal agencies now regulate family day care homes in response to this need. In addition, some local governments have begun to regulate family day care homes. These responses result from a State regulatory system that is inflexible and has not adapted to changes in day care services.

Federal and Local Agencies Are Filling the Regulatory Gap

Federal and local governments regulate the majority of family day care providers in Virginia because the State has no mechanism for regulating them. Of the 4,726 family day care home providers regulated in some form by a State, local, or federal agency and identified by JLARC staff during this study, only seven percent were licensed by the State. Most family day care is simply not defined as child day care for regulatory purposes. Although other agencies have partially filled this gap, a number of family day care providers continue to operate completely unregulated.

Many of the federal and local social services agencies which have begun to regulate day care providers clearly have such authority. This does not appear to be the case for local governments, however. As mentioned earlier, three localities have begun to register family day care homes in their jurisdictions. However, in an informal opinion dated May 16, 1989, the Attorney General stated that local regulation of child day care is without authority. The opinion holds that:

> *I can find no express legislative grant of authority for either counties or cities to enact child day care ordinances. A general grant of authority, such as that provided in §15.1-510 which authorizes a county to adopt such measures as it may deem expedient to secure and promote the health, safety and general welfare of its inhabitants, is not sufficient to authorize a county to enact an ordinance paralleling state statute. See 1976-1977 Report of the Attorney General at 208.*

Additionally, it appears clear from the comprehensive language used in Chapter 10 of Title 63.1 and the statewide licensure system that was chosen, that the state, by such statutes, has occupied the entire field of regulating child day care, and, thus, localities are preempted as to matters comprehended by such statutes.

As other agencies become involved, regulation can become more complicated. For example, the absence of State regulation can result in difficulties for providers who wish to receive USDA or Social Services Block Grant funds for the children in their care. One requirement for USDA alternate approval has been a fire and health inspection by local authorities. However, because some localities will not conduct these inspections, many providers have been unable to receive USDA funds. According to USDA, local health and fire officials in some areas cite a lack of State guidance and regulation, budgetary resources, and liability concerns as reasons why these inspections are not done. For example, as one USDA provider wrote:

I need help with meeting fire inspections for Caroline County, I have a hard time finding someone to do a fire inspection every year.

In addition, providers who must be approved by local departments of social services for SSBG funds may be regulated by more than one of these departments. Technically, because the State is not the regulatory authority, a provider must be approved by every locality from which the funds are received. One provider wrote:

I am a qualified provider for the Department of Manassas City Social Services. Why must I reapply for Manassas Park and Prince William County in full (paperwork, physical requirements, etc. .)? Why can't these two other social services get copies of my Manassas City day care provider paperwork?

Requests for Voluntary Licensure Have Been Denied

Family day care providers commented on the inability to obtain a State license because they did not care for a "sufficient" number of children. Even if these family day care providers request licensure by the State, DSS will not honor their requests. According to DSS, homes with fewer than six children cannot be regulated because they are not defined as family day care homes and thus are not subject to State regulation.

Local, State, and federal government agencies which are operating child care centers for their employees have also been unable to become State-licensed. Government facilities may only be "certified as licensed" in order to receive public funds. Otherwise, the centers are not regulated by the State. Two examples of centers which have requested licensure and been unable to obtain it are the Fairfax County Employee Child Care Center and the National Aeronautics and Space Administration

Child Development Center at Langley Research Center. DSS maintained that it could not license these centers because it has no regulatory jurisdiction or no authority to regulate operations of other government agencies, although DSS will generally certify these centers as licensed if they wish to receive public funds.

Licensing Standards May Be Too Inflexible for Some Types of Day Care

The same licensing standards are applied to all child care centers even though many special population centers are currently operating. Two examples of special population care include occasional care and before- and after-school programs. These programs must meet the same standards as the traditional child care center. Although the programs can seek variances to standards, this process can be lengthy. Lack of flexibility in licensing standards has a particularly negative impact on these special population child care centers and can best be illustrated by some specific problems.

From April 1, 1986 to March 9, 1989, the 12 licensed occasional care centers in Virginia formally requested an average of 8.5 variances to licensing standards. Variances that were requested at least five times involved outdoor playgrounds, availability of accident or school insurance, and provision of food by parents.

Allowable variances can be requested by licensed facilities and granted by DSS using the criteria of undue hardship, no adverse effect, standard not required by the *Code*, and no conflict with another agency. The process for deciding whether a variance can be granted can take months. While the decision is being made, the occasional care center may be prevented from operating or be required to operate under a conditional or provisional license. In addition, all 11 day care programs that classified themselves as occasional care on the JLARC staff survey of providers cited meeting State regulatory standards as a problem.

Some before- and after-school programs have also found the child care center licensing standards to be inflexible and, in some cases, in conflict with requirements made by other State agencies. One reason the standards are burdensome for these programs is that the standards are specifically written for facilities caring for preschool children. A Boys Club official noted that the "emphasis on younger ages makes complying with State regulation an undue burden on our clubs." Other examples of the problems with application of the licensing standards are:

> *A full-time registered nurse with eight years of experience in pediatric nursing who also taught nursing on the community college level could not be considered qualified in first aid because she had not had the required three-hour course in first aid.*

* * *

According to DSS licensing standards, a five-year old kindergarten child may sleep on a mat, bed, or cot; a five-year old preschool child in the same extended day program must sleep on a cot. The five-year old kindergarten child may choose whether or not to nap; the five-year old preschool child in the same facility must be given a designated rest period.

REASONABLENESS AND ENFORCEABILITY OF STANDARDS

A detailed review of standards for child care centers and family day care homes was beyond the scope of this study. During the course of the study, however, JLARC staff noted several indicators that suggest problems with the reasonableness and enforceability of standards. These indicators were (1) concerns raised by regulatory staff at DSS, (2) comments from day care providers, and (3) the number and types of variances to the standards requested by providers.

Regulatory Staff See Some Standards as Unreasonable and Unenforceable

In the JLARC staff surveys of licensing administrators and licensing specialists during December 1988 and January 1989, DSS regulatory staff expressed a number of concerns about licensing standards. Regulatory staff were asked if any family day care home or child care center standards were unreasonable or unnecessary. They were also asked if any of these standards were necessary but difficult to enforce. The responses to the questions show that an overwhelming majority of regulatory staff had concerns about the reasonableness and enforceability of licensing standards (Table 5). And about one-half of the licensing specialists reported that they do not receive clear explanations of new or modified standards. Some of the comments made by regulatory staff in response to these questions are listed in Exhibit 3.

The JLARC staff surveys of licensing administrators and specialists dealt with the standards that were effective at that time. Licensing staff, however, used the confidential survey to express their opinions on the proposed standards also. These comments included:

- The new standards will be harder to enforce and will be an unnecessary burden for many child care centers.
- The standards have not been made clerer or easier to implement.
- The new standards show little change from the old standards.
- Fewer, more clearly written standards are needed.

Table 5

DSS Regulatory Staff Noting Problems With Standards

Child Care Centers	Licensing Administrators	Licensing Specialists
Standards difficult to enforce	86%	58%
Standards unreasonable or unnecessary	100%	55%
Family Day Care Homes		
Standards difficult to enforce	86%	68%
Standards unreasonable or unnecessary	29%	26%

Source: JLARC staff surveys of DSS regulatory staff.

In fact, the number of standards was increased from 112 to 146, and many of the new standards include programmatic requirements.

The licensing specialists who license family day care systems also noted problems with the standards for systems. These specialists stated that the standards were sometimes unclear and redundant. They also expressed concern about the confusion created because of different standards for system-approved family day care homes and DSS-licensed homes.

One example of a licensing standard for child care centers that several licensing specialists commented on is the financial responsibilities standard. While §63.1-198 of the *Code of Virginia* requires that DSS investigate the financial responsibility of the provider, it does not require a specific investigation method. The licensing standard requires that with "an initial application for licensure, the applicant shall provide the department with a projected budget detailing expected income and expenses of the proposed center for the first year of operation; and a complete balance sheet showing separately the current assets committed to, and current liabilities charged against, the proposed center." This has been interpreted to mean that the provider must document a three-month cash flow.

According to DSS, by ensuring a three-month cash flow, parents would have some guarantee that the day care their children receive would not be disrupted after three months. However, DSS could not define a three-month cash flow or explain why a letter of credit would not assure DSS that funds were available to cover the first three months of operation. According to licensing specialists, the required balance sheet is difficult for the provider to complete and can be difficult for the specialists to

Exhibit 3

DSS Regulatory Staff Comments Regarding Licensing Standards

"Standards should be kept to a minimum, yet achieve their purpose of insuring the health and safety of the children in care in child day care facilities. Standards should be clearly written so that a manual of interpretation of the standards is not needed."

"Virginia has been licensing after-school programs, babysitting services, mothers' [morning] out programs, etc. with the same set of standards as child care centers....these other programs need to be defined and separate standards developed."

"Standards related to financial records of providers are difficult to enforce because we don't have the expertise to review budgets. We also don't do anything with this information anyway."

"Staff-to-child ratios are difficult to enforce. You'd almost have to be there all day to determine compliance."

"Standards need to be simpler, they are too cumbersome. Standards are too detailed and too time consuming."

"There are too many standards individually, we could drop or combine some. One specific example is nutrition. We've been too detailed on nutrition. There needs to be more attention on getting rid of difficult to enforce regulations even before their next review."

Source: JLARC staff surveys of DSS regulatory staff.

understand. One licensing specialist stated that "the sponsor completes the form and they [the licensing specialists] look at it. They do not necessarily understand it." It is also unclear what DSS could do if an inadequate cash flow could be identified or if a provider were to become insolvent after a license had been granted.

In addition, some providers feel that this requirement is an invasion of their privacy because when individuals are being initially licensed in order to open a child care center, their personal financial records are examined and become public information under the Freedom of Information Act. During its revision of the licensing standards, the Child Day-Care Council did not revise this standard because DSS wanted continued assurance that a new center would have a three-month cash flow. The council is now considering other ways to verify financial responsibility.

The responses to the JLARC staff survey by regulatory staff raise questions about potential problems with licensing standards. Such concerns may have an impact on the effectiveness of the regulatory system, and on the ability of regulatory staff to provide proper oversight of day care providers. It is not clear why such concerns have not been addressed by DSS, the State Board of Social Services, or the Child Day-Care Council.

Providers Also See Difficulties With Some Standards

Like regulatory staff, the day care providers surveyed by JLARC staff also commented on the difficulties of complying with some standards. While some complaints from regulated providers might be expected, the responses were specific, and quite different for centers and family day care homes. Few family day care homes found the standards with which they must comply difficult to meet. For centers, on the other hand, one-third of those responding to the JLARC survey noted problems with the standards. Comments made by center directors included:

> *We believe in regulation, but we find that the excessive cost and time spent in meeting many current regulations and keeping up with changes in standards actually detracts from the direct care and benefits we are able to provide for the children.*
>
> * * *
>
> *To require me to take two courses in psychology when I already had a minor in psychology from University of Virginia was ridiculous!*
>
> * * *
>
> *Parents often would prefer to send a child's lunch. To say a school may not "permit" parents to feed their preschoolers is insulting and patronizing.*

Between April 1, 1986 and March 13, 1989, more than 540 requests for variances to licensing standards were made by child care centers. Just six of the more than 100 standards accounted for 237 of the requested variances:

- qualifications for program director
- heated and cold running water
- location of diapering center
- enclosed toilets for school-age children
- allowances for parents to provide food
- location of training toilet or chair.

Each of these standards had more than 25 requested variances, with one standard having 81 requests. Given the comments of regulatory staff and providers, the number of variances may also be an indicator that some standards are inappropriate for some providers.

CONCLUSION

The child day care industry has expanded and become more diverse in an attempt to meet the needs of parents for day care services. However, the State's current regulatory system for child day care has not adjusted to the new dynamics of the day care industry, and as a result some problems are becoming apparent. The current regulatory system is too narrowly applied, is not consistent in its treatment of providers, and may be based on standards which are unreasonable or unenforceable.

These problems point to four principles which could be used in designing improvements to the regulatory system. These four principles are:

- Regulation should be broadly applied, to ensure protection of all children in care.
- Regulation should be uniform, to ensure that children in all settings are protected in similar ways and that similar providers are treated equitably.
- Regulation should be reasonable and enforceable, so that the focus of regulation is on matters directly related to the protection of children, and for which the State can take some action to ensure compliance.
- Regulation should be dynamic, to ensure that it is flexible and can be used to protect children in types of care that are changing and growing.

The next two chapters examine further the reasoning behind these principles, and how the State's regulatory system could be restructured to meet these principles of regulation while protecting the children in care. It is important in addressing these principles that any changes to the regulatory system be developed in a comprehensive, consistent fashion to ensure that the regulatory system does not adversely affect the availability and affordability of care.

Recommendation (1). The Secretary of Health and Human Resources should prepare a comprehensive proposal for improvements to the State's regulatory system for child day care. The proposal should ensure that the regulatory system provides an adequate level of protection for children in care, is fair and equitable to providers, is based on standards which are reasonable and enforceable, and can be adapted to changes in the child day care industry. The Secretary should report the proposal to the Joint Subcommittee Studying Early Childhood and Day Care Programs.

IV. Redefining the State's Regulatory Role

Virginia's child day care regulatory system has no defined goals to serve as the basis for regulatory decisions. Although protecting children in care has been cited by State officials as the reason to regulate day care providers, this goal does not appear to have been the primary goal for many of the decisions regarding which providers should be regulated. Concerns have been voiced that regulatory decisions have been made on a "knee jerk basis" and that "the number of exclusions is a clear sign there are no guiding principles." Decisions as to which individuals, groups, and facilities are regulated as child day care providers should be guided by the State's goals for regulation as well as by the definition of child day care.

HJR 116 and SJR 41 called for a redefinition of the State's role in child day care regulation. The study resolutions directed JLARC to "design a system which would equalize [the] impact on all types of child care, public, private or proprietary." The following questions were addressed in designing regulatory options for legislative and executive consideration:

- What could the State's goals for child day care regulation be?
- What criteria can be used to define child day care?
- What child care services can be defined as child day care?
- Which child day care providers should be regulated by the State?

WHAT COULD THE STATE'S GOALS FOR CHILD DAY CARE REGULATION BE?

The Commonwealth has historically regulated industries and professions when there is a demonstrated need to protect the public interest. At times, statutory language recognizes this need. For example, §63.1-174 of the *Code of Virginia* states that reasonable regulations governing the construction, maintenance, and operation of homes for adults are to be adopted "in order to reasonably protect the health, safety and welfare of the persons cared for therein."

In 1986, Governor Baliles confirmed the need for regulation "to protect the public health, safety and welfare" with the issuance of Executive Order Number Five. This order acknowledges that regulation, both in form and substance, must be consistent and rational. Further, it indicates that State government "has an affirmative and inescapable duty to enforce regulations that protect the public safety and welfare."

Child day care statutes do not contain a statement of regulatory intent; however, the need for regulation is clear. Children, particularly infants, are among the most vulnerable groups in society — as such they must be protected.

Need for Protection

Although parents (or guardians) are generally responsible for protecting their children, other means of protection may be needed when the children are in the care of someone other than their parents. Parents are limited in what they can do to ensure that their children are at least minimally protected while in day care. For example, it would be very difficult for each parent to require criminal records checks of all child care center staff.

Therefore, parents who contract with a child day care provider have to assume some trust concerning the provider's intent to protect their child. Unfortunately, parents may not recognize when a provider is deceiving their trust, or they may mistake the good intentions of a caregiver for suitability or knowledge about group care. Because most parents are not trained to identify the potential dangers in a group child care setting, they may not recognize unsafe situations. Many well-intentioned providers may not be aware of the hazards in caring for a group of active, demanding, and curious young children unless they are informed and monitored through regulation.

In fact, parents and providers alike appear to realize their limitations. Approximately 76 percent of parents with children in day care who responded to the JLARC/VCU survey supported State regulation. A majority of the family day care home providers, child care centers, and children's programs responding to JLARC and VCU surveys of providers also stated the State should regulate child day care providers. Even among religiously-sponsored exempt centers surveyed, 40 percent supported regulation of child day care providers by the State.

The Department of Social Services (DSS), parents, and newspaper accounts have documented hazards and even deaths while children were in day care. In addition, JLARC staff observed several potentially serious situations during field visits to day care providers and to other children's programs not currently regulated as day care.

> *In 1988, an unregulated family day care provider was found guilty of neglect after an infant died while in her care. The provider had regularly drugged the infant to keep her quiet. The last dose proved fatal. This particular provider had a criminal record in Virginia for neglecting her own children.*

* * *

A 16-month old child sustained a broken arm and two broken bones in her leg while in the care of an unregulated family day care provider in 1987. According to the provider, the child was injured when she rolled off the couch, bumped into the coffee table, and landed on the carpeted floor. However, doctors informed the parents that the injuries sustained could not have resulted from the simple fall the caregiver described.

The local department of social services and the police conducted separate investigations. Even though the police agreed with the doctors, they did not charge the provider because criminal wrongdoing could not be proven. Local social services found the provider guilty of child abuse and entered her name on the registry of known abusers. However, lack of State regulatory controls over this provider enabled her to continue caring for other children.

* * *

According to DSS, a provider evaded licensure by moving from location to location. To avoid detection, the 20 to 30 children in her care were kept inside, behind closed doors and shaded windows. The provider only employed non-English-speaking persons as assistants. One assistant was implicated in an infant crib death because she did not know how to summon a rescue squad.

During an investigation of this provider, 19 children were found to be in the care of two teenagers. Nine infants, crowded together in cribs on one side of a room, were being watched by a 15-year old boy. Despite the apparently dangerous nature of the care, at least one parent was quoted in the news as believing that the care was "fine and cheap."

* * *

JLARC staff accompanied a DSS licensing specialist on a visit to a licensed after-school program for elementary school children. The program was not housed on school property. During the visit, the specialist investigated two complaints against the center and found four violations of licensing standards.

One of the violations presented an immediate safety concern for the children in care. There was debris directly behind the gymnasium exterior doors, which were open. The pile of debris consisted primarily of boards with exposed nails. One of these boards was used to prop open the doors. This was an especially dangerous situation as the children were running and throwing balls near the

open door. The board which was propping open the door was removed to ensure the immediate safety of the children. A timetable for correcting the other violations was established.

Another concern for parents and the State is the risk of children being sexually abused while in day care. However, being in day care does not indicate a special risk to children, according to a national study of sexual abuse in day care by the Family Research Laboratory at the University of New Hampshire. In fact, the risk for sexual abuse in a child's own household is greater than that in day care. Study findings do suggest that monitoring or increased supervision of day care settings reduces the severity of abuse. This correlates with findings in New York City where 17 of 18 substantiated cases of sexual abuse at child care centers occurred in unlicensed facilities.

In Virginia, there is no way parents can evaluate the complaint history of an unregulated day care provider. Parents do not have access to the Child Protective Services Central Registry, which is a database of individuals found to have committed child abuse or neglect, to check the history of a provider. Therefore, parents cannot determine if the provider has ever been the subject of a founded complaint unless the provider agrees to obtain his or her record for review by the parents.

In addition, just because a provider does not have a founded complaint on his or her record does not mean that previous complaints have not been made. Local child protective services workers must find by clear and convincing evidence that abuse or neglect actually occurred for a complaint to be termed founded. This differs from criminal convictions which are based on evidence beyond a reasonable doubt. Therefore, it is possible to have the same circumstances reported in the central registry as a founded complaint but in the court records as an acquittal, or vice versa. In addition, records are purged from the registry on a regular basis — retention of the records currently ranges from one to 28 years, depending upon the case circumstances. Information on unfounded cases is not retained.

Through regulation, the Commonwealth has legal authority and resources beyond those of parents and providers that can be used to protect the children in day care. Although the State cannot guarantee absolute protection when children are in care, regulation can ensure that obvious safety and health threats are absent in day care situations — thereby reducing the risks for physical and emotional harm. Minimal standards can be set for individuals in a caregiving role as well as the facilities where care is provided. In addition, when parents or regulatory staff observe problems in day care subject to regulation, corrective action can be taken. However, the State's ability to monitor and correct problems in unregulated situations is limited to criminal prosecution — after children have been abused or harmed. Therefore, children in unregulated day care situations may be at greater risk.

Potential State Goals for Regulation

Given the vulnerability of children, it seems reasonable to propose that the most important goal of State regulation should be to protect the children in child day care. To ensure their protection, regulatory treatment should be fair and consistent statewide — both in terms of who is regulated and the manner in which regulation is enforced.

Equity in regulation may be interpreted two ways. One is that all providers of day care should be subject to regulation. This concept is known as horizontal equity and complements the principles of applying regulation broadly and uniformly. A second is that diversity in the types of day care offered could be recognized through vertical equity. For example, different sets of regulatory requirements could be developed, each set to be applied to a specified grouping or setting where care is provided. Every provider within that grouping would meet the same requirements. The concept of vertical equity is consistent with the principles of dynamic and reasonable regulation.

Two additional goals must be considered in regulatory decisions, however. State policy, according to Executive Order Five, is to intrude to the "least possible extent into the legitimate functions of private enterprise and individual citizens." The order also states that regulations should not "unnecessarily burden the activities of private businesses and citizens." These goals complement the principle that regulation should be reasonable and enforceable.

Therefore, the regulatory system should protect as many children in day care as possible while ensuring that regulation is applied equitably and appropriately. At the same time, parental choice, availability, and affordability of day care must be preserved. Although the goal of equity is consistent with the State's commitment to protecting children, the other regulatory goals may conflict with protection and with each other. Tradeoffs may be required.

WHAT CRITERIA CAN BE USED TO DEFINE CHILD DAY CARE?

There is confusion about what day care is and how it differs from other types of child care. Consequently, there is no one generally accepted definition that is specific enough to distinguish child day care from other types of child care. The terms are often used interchangeably. In this report, "child care" will refer to the whole range of services to children; some may be day care, while others are not day care.

Custodial Nature of Child Day Care

Historically, day care was considered to be custodial care for the preschool children of low-income working parents — the term was synonymous with day

nursery, the predecessor of the modern-day child care center. Custodial care refers to the basic aspects of child day care that relate to the protection of children from physical and mental harm. Custodial care is comprised of supervisory actions that are essential to a child's health, safety, and welfare in any child care program.

Today, the concept of day care has expanded to include services used by parents of all income levels for a variety of reasons, including care for school-age children before and after school. In addition, many different types of arrangements and settings for the supervision and care of children are now considered to be day care. Day care arrangements are still categorized as custodial in nature, however.

As the concept of day care has become more inclusive, the distinctions between day care and some other forms of child care have become less clear-cut. Many day care arrangements have educational and recreational components. The ages or developmental levels of the children in care often determine the manner in which care is classified. For example, infant care is predominantly classified as custodial in nature while care for preschool and school-age children could be classified as educational or recreational in addition to custodial. The settings in which day care is provided also tend to differ by age or developmental level — as schools and recreational facilities are used to provide day care for school-age children.

Child care services cannot be classified as child day care solely on the basis of whether or not they are custodial in nature. Many children's programs consider the custodial nature of their services incidental to a developmental or recreational focus. It may be difficult to assess the custodial nature of such programs without looking at other characteristics. In addition, not all child care services that are obviously custodial in nature can be classified as child day care. Foster care is certainly not day care even though it is custodial (and should therefore be regulated in ways other than by day care standards).

Characteristics of Child Day Care

Child care experts agree that day care is custodial in nature even though it may contain educational or recreational components. Therefore, day care may best be defined in terms of characteristics which both reflect the custodial nature of the care and distinguish it from other types of child care. In addition, a definition of day care must meet the goals of custodial care — guarding or keeping children safe from harm.

Definitional characteristics were developed through a search of professional literature, a review of state definitions, and an analysis of characteristics in recognized day care situations. In combination, five characteristics were used to determine whether or not a particular service could be defined as child day care. These characteristics included:

- The caregiver is not the parent or guardian.
- The care is provided on a part-day basis and is supplemental to care provided by the parent or guardian.
- A contractual relationship exists between the provider and parent or guardian.
- The provider is expected to be responsible for the children's whereabouts and well-being while in care.
- Care is available on an ongoing or regular basis.

The Caregiver Is Not the Parent or Guardian. The care provided by parents and guardians is not day care although it is certainly a type of child care. Instead, such care is simply a part of parental responsibilities. Only care provided by individuals other than parents or guardians, supplemental to parental care, can be considered child day care. This could include care provided by relatives, friends, or neighbors.

The Care Is Provided on a Part-Day Basis. Because child day care supplements parental care, it typically is provided on a part-day basis. A part-day provision is included in the current definitions of "child care center" and "family day care home" within the Code of Virginia. Part-day means that care is generally provided for periods of 24 hours or less; however, occasionally care may be provided for a more extended period.

A Contractual Relationship Exists. There is typically a contractual relationship between the provider and the parent or guardian of each child in care. This contract or agreement may be written or verbal and requires the provider of services to assume temporary custody or care of the children. A contractual relationship does not always involve payment for services rendered, but one exists when a fee is paid for care.

The Provider Is Expected to Be Responsible for Children's Whereabouts and Well-Being. Even though legal guardianship remains with the parent or guardian, he or she cannot carry out these responsibilities while the children are in the day care provider's care. Therefore, the provider temporarily assumes parenting responsibilities, including control of and responsibility for the whereabouts and well-being of the children in care. In a child day care setting, parents should expect that their children will not be allowed to leave the premises of the facility or home where day care is provided without their prior permission or knowledge. A contractual agreement alone would not necessarily imply a transfer of responsibilities. For example, agreements for services like supervised instruction may not incorporate responsibility for the whereabouts of the children taking lessons.

The Care Is Available on an Ongoing Basis. Child day care is utilized by parents for a variety of reasons. However, its predominant use is to allow parents to work. For the service to be useful as a means of custodial care, there must be some continuity in the provision of day care services. Thus, care should be available on an ongoing and regular basis.

Some states do not classify a service as day care unless it is available for extended periods of time, such as a certain number of hours each week or weeks each year. For example, services classified as day care in Massachusetts must be available for more than one day each week or eight or more weeks a year. Indiana requires that care be provided for more than four hours each day during ten consecutive workdays before it can be classified as day care.

The number of hours, days, or weeks that care must be available before it can be classified as ongoing is an arbitrary determination. Virginia could use a threshold based on hours of operation used by another state or develop its own.

Recommendation (2). The comprehensive proposal of the Secretary of Health and Human Resources for improvements to the State's regulatory system for child day care should include a definition of child day care. Child day care services should be defined as any care of one or more children which meets the following criteria: care is provided by one or more individuals who are not the parents or guardians of all children in care; care is provided on a part-day basis; there is a contractual agreement with the parents of the children in care; the provider is expected to be responsible for the whereabouts and well-being of the children while in his or her care; and care is available on an ongoing, regular basis.

WHAT CHILD CARE SERVICES CAN BE DEFINED AS CHILD DAY CARE?

Because the State's goal in regulating child day care may differ from its goal in regulating other child care services, it was necessary to determine which providers of child care services could be classified as day care providers. JLARC staff were able to make an early determination that some children's services and programs would not meet the definition of child day care because the care obviously did not meet all the characteristics of day care or could not be classified as custodial in nature (Exhibit 4). These programs were, therefore, not surveyed.

However, JLARC staff collected information from other providers of child care services, including recognized day care providers and various children's programs which might meet the definition of child day care. These child care programs were placed into one of four groupings: child care centers, family day care homes, in-home care providers, and other sponsors of children's programs. Survey results were

Exhibit 4

Child Care Services and Programs That Clearly Are Not Day Care

Service or Program	Custodial Care		Does Not Meet One or More Definitional Characteristics
	No	Yes	
Medical Care	✓		
Sunday School	✓		
Academic Classes	✓		
Extracurricular School Activities	✓		
Sports Leagues	✓		
Special Clubs	✓		
Supervised Instruction	✓		
Adoptive Placement		✓	✓
Correctional Learning Centers		✓	✓
Psychiatric Hospitals		✓	✓
Boarding Schools		✓	✓
Foster Care		✓	✓
Church Nurseries		✓	✓
Babysitter		✓	✓

Source: JLARC staff analysis.

assessed against definitional characteristics to determine whether or not these providers and programs could be defined as child day care. Field visits provided additional information used in making determinations.

Child Care Services and Programs that Clearly Are Not Day Care

JLARC staff made an early determination that several types of child care services and programs would not meet the definition of child day care. Some of these services were clearly non-custodial. Others were known not to meet one or more of the definitional characteristics of child day care.

Non-Custodial Child Care Services and Programs. Several situations in which children are under the temporary supervision of someone other than their parents or guardians did not meet the first criterion in defining child day care because they were clearly non-custodial. Medical care provided by hospitals and emergency clinics is not child day care. The purpose of Sunday school or religious study classes is religious instruction — to teach children the beliefs of the church. Academic classes at public and private schools (kindergarten and higher levels) provide State-mandated education for children. Extracurricular school activities, sports leagues, and special clubs — such as the Boy Scouts — generally have skill and social development as their purpose. Supervised training or instruction in a specific area such as literature, art, drama, dance, music, or athletic skills are also excluded as being non-custodial in nature.

Custodial Care Which Clearly Was Not Day Care. Several other types of child care were not considered because they have characteristics which preclude them from being classified as child day care. For example, adoptive placement is excluded by the first characteristic, the caregiver is not the parent or guardian. Residential care also does not meet one of the key characteristics of day care: provision on a part-day basis, supplemental to the care given by the parent or guardian. This would include, but not be limited to, care provided in correctional learning centers, psychiatric hospitals, private boarding schools, and foster care placements. Although care provided in church nurseries so that parents may attend religious services is available on a regular basis — generally every Sunday — it is not day care. This care is available for such a limited time each week that it could not be considered ongoing care. Similarly, the occasional care provided by a babysitter in a child's home could not be classified as day care. In this report, "babysitter" refers to someone who provides supervisory custodial care for children on an irregular basis.

In addition, day treatment programs, while custodial in nature, clearly are not day care. For example, the Department of Mental Health, Mental Retardation and Substance Abuse Services' Respite Day Treatment Module and the Department of Corrections' Day Treatment programs serve a purpose different from day care. Such programs are also subject to regulation by other authorities.

Recommendation (3). The comprehensive proposal of the Secretary of Health and Human Resources for improvements to the State's regulatory system for child day care should exclude services such as medical care, academic classes at public and private schools which provide State-mandated education, supervised training or instruction, and extracurricular activities which are not custodial in nature from consideration as child day care. In addition, Sunday school, religious study classes, and care provided in church nurseries so that parents may attend religious services should be excluded from the definition of child day care.

Child Care Centers

Child care centers are recognized as child day care providers (Exhibit 5). In Virginia, not all child care centers are regulated, however, because sponsorship determines whether or not a center must be regulated. Religiously-sponsored centers may be exempted from licensure, while hospital- and government-sponsored centers are excepted from regulation. However, all child care centers provide child day care regardless of sponsorship. (Additional information on the definitional characteristics of child care centers by sponsorship can be found in Appendix D.)

Child care centers are typically non-residential facilities, and generally care for more children than are cared for in a home. Child care centers in Virginia reported caring for an average of 69 children each.

Care in these centers was provided on a part-day basis. Almost all centers operated during the morning and afternoon. Approximately 19 percent were also open during some evening hours, but none of the centers surveyed reported providing overnight care. On average, most children in care stayed at the center for eight hours each day.

Child care centers almost always had a formal contractual relationship with the parents of the children in their care. Ninety-three percent of the centers responding reported that they had a written agreement with parents.

Child care center staff took responsibility for the whereabouts of the children in their care. All centers that responded reported that children were not allowed to leave the program's premises without the staff's permission. In addition, children in 69 percent of the centers were signed in and out each day to control attendance and whereabouts. While signing children in and out is not a necessary condition of assuming responsibility for the whereabouts of the children in care, it is one means of determining whether or not this criterion has been met.

Care at child care centers was available on an ongoing basis. Seventy-seven percent of centers reported operating on a year-round basis. Another 21 percent operated during the school year only. Almost all of these centers were open five days a week.

Family Day Care Homes

Family day care homes have traditionally been recognized as child day care providers. These homes generally care for one or more children during the day. Survey results indicated that, on average, unregulated family day care providers in Virginia cared for 4.1 children while regulated providers cared for 5.7 children. Providers that were licensed by the State cared for more children — 7.9 children on average. According to survey responses, family day care homes had as few as one child

Exhibit 5

Evaluation Criteria for Assessing Who Provides Child Day Care

Provider or Program	Definitional Characteristics					Current Regulatory Treatment	
	Caregiver not Parent or Guardian	Care Provided on Part-Day Basis	Contractual Relationship Exists	Provider Responsible for Whereabouts of Children	Care Available on Ongoing or Regular Basis	Recognized as Child Day Care in Other States	Recognized as Child Day Care in Virginia
— Child Care Centers	●	●	●	●	●	✓	✓
Proprietary	●	●	●	●	●	✓	✓
Non-Profit	●	●	●	●	●	✓	✓
Employer-Sponsored	●	●	●	●	●	✓	✓
Government-Sponsored	●	●	●	●	●	✓	
Hospital-Sponsored, Public	●	●	●	●	●	✓	✓
Hospital-Sponsored, Employees Only	●	●	●	●	●	✓	
Religiously-Sponsored	●	●	●	●	●	✓	✓
Extended Day, Licensed	●	●	●	●	●	✓	✓
"Mothers' Morning or Day Out"	●	●	●	●	○	✓	✓
— Family Day Care Homes	●	●	●	●	●	✓	✓
Six or more unrelated children	●	●	●	●	●	✓	✓
Five or fewer unrelated children	●	●	●	●	●	✓	
— In-Home Care*	●	●	●	●	●		
— Other Children's Programs	●	●	●	●	●	✓	
Nursery School	●	●	●	●	●	✓	
Extended Day, Public School	●	●	●	●	●	✓	
Parks and Recreation Department (Selected programs)	●	●	●	●	○	✓	
Boys Club (Selected programs)	●	●	●	△	○	✓	
Girls Club (Selected programs)	●	●	●	●	○	✓	
Summer Day Camp	●	●	●	●	△	✓	

* Data were not collected for these providers; instead, information from placement agencies and job descriptions were used in assessment.

● Indicates majority of providers or programs responding to JLARC surveys meet characteristic.

○ Indicates majority of providers or programs responding to JLARC surveys appear to meet characteristic, but could be excluded depending on the threshold adopted.

△ Indicates one or more, but not majority, of programs responding to survey meet characteristic.

✓ Indicates provider or program is recognized as child day care in Virginia and/or other states as indicated.

Source: JLARC staff analysis of data provided by providers and programs and by other states.

or as many as 14 children in care. Although the number of children in care has been used by Virginia and other states to determine regulatory treatment, all family day care homes, regardless of the number of children in care, are child day care providers.

Family day care homes met all the definitional characteristics. Although family day care providers often had one or two of their own or related children in care, the caregiver was not the parent or guardian of all children in care. Care given to a provider's own children in a home setting is parental care, not day care. However, the care given to other related children during the day meets the criteria for day care.

Survey results showed that care was provided on a part-day basis. More than 90 percent of family day care providers reported that care was available during both mornings and afternoons. More than one-half of the regulated providers reported that care was available in the evenings as well. Only ten percent of providers offered overnight care, however. On average, regulated family day care providers reported that most children were in their care for more than nine hours each day. Unregulated providers reported that most children were in care 7.6 hours each day.

Family day care providers had a contractual relationship with the parents of the children in their care. In regulated care, two-thirds of all agreements were written. Unregulated providers generally had verbal agreements with parents, however.

Family day care providers took responsibility for the whereabouts of the children in their care. Ninety-nine percent of regulated providers and 100 percent of unregulated providers reported that the children in care were not allowed to leave their home or yard without permission.

Finally, family day care, both regulated and unregulated, was available on an ongoing and regularly scheduled basis. Although some regulated providers offered care only during the school year, 90 percent reported that they provided care for children year-round. In addition, more than 80 percent of regulated family day care providers cared for children five days a week. Approximately 11 percent offered care more than five days each week. The percentages for unregulated providers were similar with 89 percent providing care year-round, 77 percent caring for children five days a week, and 13 percent offering care for more than five days each week.

In-Home Care Providers

Care provided for children in their own homes is commonly known as in-home care whereas care provided in the caregiver's home is known as family day care. The International Nanny Association classifies six types of in-home child care providers: babysitters, au pairs, parent helpers, nannies, nursery nurses, and governesses. The association's definitions for these providers are used throughout this report. In addition, relatives sometimes serve as in-home providers.

With the exception of babysitters, who have already been discounted as day care providers because they do not provide care on an ongoing basis, all types of in-home providers were assessed against the definitional characteristics to determine whether or not they could be classified as day care providers. While JLARC staff did not survey these providers because of identification problems, information was collected from various placement agencies, and job descriptions from the International Nanny Association were used.

Two types of in-home caregivers — nannies and nursery nurses — can be classified as child day care providers. Nannies are employed to undertake all tasks related to the care of the children in a family. They may be employed on a live-in or a live-out basis and usually work between 40 and 60 hours each week. Nannies' duties are generally restricted to child care. Nursery nurses are similar to nannies in their employment and duties. However, the title implies that the individual has had special training and preparation in caring for young children.

Other Sponsors of Children's Programs

Several other sponsors of children's programs have not traditionally been recognized as providers of child day care in Virginia. Many of these sponsors consider the custodial nature of their care secondary to another purpose. For example, nursery schools provide education, and Boys Clubs and Girls Clubs offer social and personal skills development. Some of the programs offered by these sponsors would be recognized as child day care by other states. While most of the programs described in the surveys returned by nursery schools, public schools, recreation and parks departments, Boys Clubs and Girls Clubs, and summer camps met the definitional characteristics of child day care, a case-by-case determination may be required for many programs.

Nursery Schools. Because of their educational focus, nursery schools that meet certain age and hour limitations are not currently considered child day care in Virginia and are not regulated as either day care or as schools. (Children between the ages of two and four may not attend for more than four hours each day while children five years of age may not attend more than six and one-half hours each day.) In contrast to Virginia, however, all but one of the 15 states surveyed by JLARC staff considered nursery schools to be child day care. Nursery schools were not distinguished from child care centers on the basis of their educational focus. All day care programs are educational by their nature, regardless of whether or not there is an acknowledgement that children are learning something while in day care. The quality and type of education may differ.

The Secretary of Education and the Secretary of Health and Human Resources no longer distinguish between nursery schools and child day care services on the basis of their educational focus. In their article, "An 'Even Start' for Children at Risk," the secretaries propose that the "goal of Virginia's policy should be to

eliminate the separation between early childhood development and child day care." They cite a consensus that these two fields are now inseparable.

Nursery schools are similar to child care centers in other ways as well. Most nursery schools responding to the JLARC staff survey of children's programs provided activities similar to those provided in child care centers for the children in their care (Table 6).

The nursery schools surveyed reported various classifications for the programs they offered children including before- and after-school care, summer day camps, personal and social skills development programs, and organized sports programs. Most termed their program a nursery school or preschool. Regardless of the manner in which the program was described, nursery schools met all of the definitional characteristics of child day care. Survey results indicated that, except for the hours care was offered, nursery schools did not significantly differ from child care centers. Therefore, although these schools could not typically be used by parents who work full-time as the only means of child day care, they could be used to provide part-time day care.

As in child care centers, the caregiver or teacher was not the parent or guardian of all children in care. In some nursery schools, parents took turns acting as a caregiver one or two days a month. Regular staff were also employed, however, and the parents of all children in care did not act as caregivers at all times.

Care in nursery schools was provided on a part-day basis. Nearly all schools operated during the morning and two-thirds operated during the afternoon. On average, children were in care at nursery schools for slightly more than five hours each day they attended.

Table 6

Comparison of Selected Activities in Nursery Schools and Child Care Centers

	Type of Activity			
Type of Provider	Field Trips	Recreation Activities	Skills Development	Arts and Crafts
Nursery Schools (N=177)	84%	97%	89%	95%
Child Care Centers (N=226)	79%	99%	97%	98%

Source: JLARC staff surveys of providers.

Nursery schools also had a contractual relationship with the parents or guardians of the children in their care. Eighty-nine percent of nursery schools responding to a JLARC survey indicated that they had a written agreement with the parents of the children in their care.

Nursery schools assumed responsibility for the whereabouts of the children in their care. Only one of the 177 nursery schools responding indicated that children could leave program premises without staff permission. Children in almost one-half of the nursery schools were signed in and out.

Generally, nursery schools operate during the school year. Care available over such an extended period of time must be considered ongoing in nature. In addition, 90 percent of the nursery schools operated five days a week. Two-thirds of schools reported that children generally attended five days a week. In another 27 percent, children attended three or four days a week.

Two nursery schools visited by JLARC staff were illustrative examples of the range in programs offered. Even though these programs differed in their operations, both met the definition of child day care.

> *One nursery school program was offered to children two and one-half through four years of age. The program operated five days a week during the school year only. Two sessions were offered (one in the morning and another in the afternoon), but children could only attend one. The number of mornings or afternoons children attended was generally between two and four each week, but depended on the children's ages. Children were in care for two to three hours each day they attended.*
>
> *Parents had a contractual relationship with the program. They paid fees, received a copy of the program by-laws, and agreed to participate as staff each month. Children were not allowed to leave the program while in care.*
>
> * * *
>
> *A second nursery school program operated for four- and five-year olds on a year-round basis. Children attended five days a week for six hours each day. Although there were no fees charged for program participation, parents did have a written agreement with the program. Children were not allowed to leave program premises while in care.*

Extended Day Programs in Public Schools. All of the extended day programs sponsored by public schools that were surveyed met the definitional characteristics. These public school programs did not differ from other extended day programs which are considered child day care by the State.

As with before- and after-school care offered by private schools and care provided in public schools which has been contracted out to private providers, the caregiver was not the parent or guardian of the children in the program.

Care was provided on a part-day basis. All of the programs operated in the morning and the afternoon, therefore, care was provided both before and after school. On average, children were in care for slightly more than three hours each day.

The extended day programs had a contractual relationship with the parents of the children in care. All of the programs surveyed indicated that they had a written agreement with parents.

Extended day programs took responsibility for the children's whereabouts while in care. In all programs surveyed, children could not leave the program premises without staff permission. In addition, children had to sign in and out at each of the programs.

The extended day programs provided care five days a week throughout the school year. At least one also operated a full-day program during the summer when school was not in session. For example:

> *One school system operated two programs for children between five and 12 years of age. During the school year, care was available before and after school five days a week. Children were generally in care for three hours each day. During the summer, the school worked with the local recreation and parks department to provide full-day care for children.*

Recreation and Parks Programs. Currently, children's programs operated by local recreation and parks departments are not recognized as child day care in Virginia because they are sponsored by local governments. Other states vary in their treatment of recreation and parks programs. Of the 15 states surveyed, ten regulate at least some programs offered by local recreation and parks departments as child day care.

According to department representatives and survey respondents, several different kinds of children's programs were offered through local recreation and parks departments. These programs included organized sports programs, various instructional classes, personal and social skills development programs, summer day camps, summer playgrounds, nursery schools, and before- and after-school programs.

Because of the diversity in recreation and parks programs, it is difficult to generalize about their programs and whether or not they meet the definition of day care. Some programs operated by recreation and parks departments met the definition of child day care and some did not — given the assumption that the caregivers in each program were not the parents or guardians of most children (Table 7). All programs described by the recreation and parks departments surveyed

Table 7

Characteristics of Programs Offered by Local Recreation and Parks Departments

Characteristic	Type of Program: Before- and After-School (N=23)	Summer Day Camp (N=36)	Nursery School (N=4)	Skills Development (N=2)	Sports (N=9)
Part-Day Operation					
Operate in mornings	39%	97%	100%	50%	44%
Operate in afternoons	96%	100%	25%	100%	89%
Operate in evenings	39%	25%	0%	50%	78%
Operate overnight	0%	0%	0%	0%	0%
Contract With Parents					
Written agreement	70%	81%	75%	100%	56%
Verbal agreement	0%	0%	0%	0%	0%
Other agreement	17%	11%	25%	0%	33%
No agreement	13%	8%	0%	0%	11%
Responsible For Children					
Children may not leave without permission	61%	86%	100%	100%	78%
Signed in and out	57%	56%	50%	0%	11%
Available On Ongoing Basis					
Operate five or more days each week	87%	89%	75%	0%	67%
Operate three or four days each week	9%	11%	25%	0%	11%

Source: JLARC staff survey of providers.

operated on a part-day basis, and 90 percent had some type of contractual relationship with the parents of the children in the program. A majority indicated that they took responsibility for the whereabouts of the children in care by either not allowing them to leave program premises without staff permission or signing children in and out. Eighty-two percent of programs operated five or more days each week.

The title of a program offered may be misleading; for example, an after-school program is not necessarily day care. Of three different after-school programs visited by JLARC staff, only one could be classified as child day care.

A rural recreation and parks department offered an after-school program for children in the locality. This program was available year-round in the afternoons and evenings. Children ages nine and older could drop in Monday through Saturday for recreational activities. However, the program could be cancelled without notice to community youth if the facility had been rented out to a private group.

This particular program clearly did not meet two definitional characteristics. First, the department did not have an agreement with the parents of the children who attend. No fees were charged for program participation. Second, children did not sign in or out; they were free to come and go as they pleased, without staff permission.

* * *

A second after-school program offered through a local recreation and parks department met all definitional characteristics except one. It was not available on an ongoing basis. The program was offered one afternoon each week during an eight-week period only.

* * *

A third after-school program operated by an urban recreation and parks department met all definitional characteristics. This program was operated throughout the school year three afternoons each week and conforms to school hours — on early release days it operates for an extended time period. The program encourages participation in a number of activities including arts, games, and recreation. There is also space for students to use to complete their homework.

The department had a written agreement with the parents of the children participating. Children were not allowed to leave the program premises without first obtaining staff permission.

Some summer programs offered by local recreation and parks departments could also be classified as child day care. Two types of summer programs were visited: summer playgrounds and summer day camps.

One local recreation and parks department offered both summer day camps and summer playgrounds. The summer day camp was

operated much like a child care center, using local schools as facilities. The playground program also made use of local schools but operated differently from a typical child care center.

The day camp program met all definitional characteristics of child day care but the playground program did not. Children could attend the day camp from 7:00 a.m. to 6:30 p.m. Monday through Friday throughout the summer. The department had a written agreement with the parents of the children in care. Children could not leave the program without permission. The playground program was available between 10:00 a.m. and 4:00 p.m. Monday through Friday. Children had to be registered for the program, but the department did not have a written agreement with parents. Once registered, children could come and go as they wished without staff permission.

It appears that a case-by-case determination about whether or not a particular program meets the definition of child day care must be made for recreation and parks programs.

Boys Clubs and Girls Clubs. There are some important distinctions between Boys Clubs and Girls Clubs and other children's programs. The clubs typically state their purpose as enhancing social and personal skills development for children. Clubs are open to members only — typically low-income children between the ages of six and 18. Members pay a nominal fee each year to receive a membership card and identification number. When entering the club, members generally sign-in using their identification number but may be free to come and go at will. In addition, some clubs have indicated that they have an agreement with the child — rather than the parent.

Because of these distinctions, it is not surprising that Boys Clubs and Girls Clubs in Virginia have not traditionally been recognized as child day care providers. A few states do regulate at least some of the programs offered through these clubs as day care, however.

Survey responses indicated that the activities in Boys Clubs and Girls Clubs were similar to those provided in recognized child day care programs for children of the same ages. These organizations generally offered field trips, recreational activities, arts and crafts as well as social and personal skills development activities. During the school year, the clubs indicated that they might assist with homework.

Boys Clubs responding to the survey classified their programs in four ways: before- and after-school programs, summer day camps, personal and social skills development, and sports programs (Table 8). The manner in which a program was classified did affect whether or not it met the definitional characteristics of child

Table 8

Characteristics of Programs Offered by Boys Clubs

Characteristic	Type of Program: Before- and After-School (N=5)	Summer Day Camp (N=2)	Skills Development (N=3)	Sports (N=3)
Part-Day Operation				
Operate mornings	60%	50%	100%	33%
Operate afternoons	100%	100%	100%	100%
Operate evenings	100%	50%	100%	67%
Operate overnight	0%	0%	0%	0%
Contract With Parents				
Written agreement	20%	50%	67%	67%
Verbal agreement	40%	0%	0%	0%
Other agreement	20%	50%	0%	33%
No agreement	0%	0%	33%	0%
Responsible For Children				
Children may not leave without permission	40%	0%	67%	0%
Signed in and out	40%	50%	67%	67%
Available On Ongoing Basis				
Operate five or more days each week	100%	100%	100%	67%
Operate three or four days each week	0%	0%	0%	0%

Source: JLARC staff survey of providers.

day care. Only four of the 13 programs for which Boys Clubs responded to the JLARC survey could be classified as child day care programs — two before- and after-school programs and two skills development programs. Three of the other programs described might meet the definition of child day care, but would have to be reviewed further before a clear determination could be made. Although these programs controlled the whereabouts of children with a sign-in sheet, children were allowed to come and go as they pleased, without staff permission.

Clubs may offer programs during the school year that differ from those offered during the summer. Programs offered by Boys Clubs visited by JLARC staff are examples:

> *One Boys Club operated an after-school program for its members which clearly did not meet the definitional characteristics of child day care. Children ages seven through 17 could attend in the afternoons and evenings on weekdays as well as during the morning and afternoon on Saturdays. Boys were generally at the club for four hours at a time, but the number of days attended each week varied.*
>
> *Boys paid $30 each year in membership dues. According to the director, a child could join with proof of age only; parental permission was required only for field trips and participation in sports. Although boys had to sign in when they arrived, they did not sign out before leaving. Boys could leave the club at any time, without staff permission.*
>
> * * *
>
> *The same Boys Club operated differently during the summer — offering an 11-week program which seemed to meet day care characteristics. The club was open Monday through Friday during the summer. The program operated between 9:30 a.m. and 4:30 p.m., but had an early bird option with extended hours — 6:30 a.m. to 6:00 p.m. There was a $10 registration fee for the early bird option as well as a $4 daily fee. Parents who picked up their sons after 6:00 p.m. were assessed $1 for every five minutes they were late.*
>
> *All boys attending the summer program had to be registered for attendance. Parents had to agree to club rules. For example, boys were not allowed to enter the club unless escorted by a parent. Parents had to come into the building to check in and sign out their sons. While in the program, boys had to stay on club property and could not leave unless accompanied by their parent or a club staff member.*

Four Girls Clubs responded to the written survey — two for a before- and after-school program, one for a summer day camp, and the other for a skills development program. All four programs appeared to meet all the definitional characteristics for day care. All four operated five or more days a week, during the afternoon. Three also operated in the morning. Three of the four had a contractual agreement with the parents; the fourth did not respond to this question. None of the programs allowed the children to leave unless they had permission to do so, and all required children to sign in and out. Field visits confirmed that the programs operated by Girls Clubs could generally be classified as child day care. For example:

One Girls Club advertised its after-school program as an alternative to having a latchkey child. The program provided transportation from several area schools to the club each afternoon. The after-school program operated from 3:00 p.m. to 5:30 p.m every weekday; girls generally attended 2.5 hours each day. The club extended its hours when school let out early and on holidays, so that it was open from noon until 5:30 p.m. or all day.

The program served girls between four and 18 years of age. To participate, girls had to be club members — at a fee of $6.75 each year. In addition, they paid program service fees of $2 or $3 each week, depending upon whether or not they required transportation from school to the club facility.

The club had a written agreement with the parents of the children in care — including a membership form and a consent form for emergencies. Generally, girls could not leave the program facility without staff permission unless their parents had authorized them to do so.

It appears that many summer programs offered by Boys Clubs and Girls Clubs differed in structure from their school-year programs. Often summer programs had a separate, higher charge. Children tended to be in the facility for longer periods of time and were not able to leave without permission. While most summer programs appear to meet the definition of child day care, all programs offered by these organizations must be assessed on a case-by-case basis to determine if they meet the definition of child day care.

Summer Camps. In Virginia, summer camps which are required to be licensed by the Department of Health are excepted from regulation as child care centers. However, summer day camps that operate as an extension of a licensed child care center are also subject to licensure as a child care center. Five of the 15 states surveyed also regulate some summer camps as child day care.

Although 60 summer camps responded to the JLARC survey of children's programs, only eight classified themselves as day camps. The remaining 52 were residential camps and, therefore, were not considered further in the assessment of whether or not they could be classified as child day care providers.

The day camps responding to the survey generally met the definitional characteristics for child day care. Day camps typically operated five days a week during the mornings and afternoons. Although three camps were also open during evening hours and for overnight stays, it was not clear if this was only for one or two days each session or every day. Generally, children attended five days a week.

Day camps usually reported having an agreement with the parents of the children in care. Seventy-five percent of these agreements were written.

All eight of the camps took responsibility for the whereabouts of the children in care. None allowed the children to leave program premises without staff permission.

While many day camps may be available on an ongoing basis throughout the summer, others operate a limited number of days or sessions each year. For example:

> *One Boy Scout Council operated a summer day camp five days a year for Cub Scouts. Scouts could attend one to five days, one of which was overnight. Because of the limited time frame, such a program should not be considered child day care.*
>
> * * *
>
> *A private school operated a summer day camp for its students and others accepted in the special program. The camp operated in two three-week sessions between 8:00 a.m. and 5:15 p.m., Monday through Friday.*
>
> * * *
>
> *A youth organization operated a day camp for members as part of its summer program. Five two-week sessions of day camping were offered at a cost of $35 each session. The organization limited attendance for each child to two sessions, or a total of four weeks. The remainder of the summer could be spent at the organization's regular facility. Each session included two overnight stays.*

With the exception of providing care on an ongoing basis, summer day camps generally met all definitional characteristics of a child day care provider. Camps will need to be assessed on an individual basis to determine whether or not the time frame for operation can be considered regular and ongoing.

WHICH CHILD DAY CARE PROVIDERS SHOULD BE REGULATED BY THE STATE?

Currently, the majority of day care providers in Virginia are not regulated. Because the primary goal of regulation is to protect the children in care, the reasons for not regulating day care providers must be compelling. Therefore, the appropriateness of the current exceptions and exemption to regulation as well as the possible

exclusion of other providers was evaluated using the proposed goals for regulation discussed earlier.

Only those individuals and programs that met the definition of child day care providers should be considered for regulation. While legitimate concerns have been raised about the protection of children in residential summer camps and other programs which cannot be defined as child day care, regulating these programs as child day care would not be appropriate.

Ensuring that Regulation Is Applied Equitably

If regulation were applied equitably, all who provide the same service — child day care — would be subject to regulation. This secondary goal complements the primary goal of protecting children, and also ensures fair and consistent treatment of providers. Therefore, unless another goal can be shown to override this one, all child day care providers should be regulated.

In assessing this goal, JLARC staff evaluated the current exceptions and exemption related to number of children in care, educational focus of care, and sponsorship of care.

Number of Children in Care. Equity in regulation would mean that, despite the number of children in care, all providers would be regulated. Currently, family day care homes are not regulated by the State unless they have more than five children who are not related to the provider of care. Many family day care providers would like to be regulated for professional reasons, but cannot be because of the number of children they keep. The current exception for these homes leaves the children in care unprotected and the parents with limited recourse when there is a problem. In addition, the State is limited in what can be done when there are problems with unregulated family day care providers.

In order to equalize the impact of regulation on all providers, all family day care homes should be considered for regulation in some form. Otherwise, children are not protected, parents have limited recourse in case of problems, and providers are not treated equitably. However, there may be practical limitations on the ability of the State to identify and regulate the very smallest of family day care homes. These limitations should be recognized in any modifications to the current regulatory system.

Recommendation (4). The comprehensive proposal of the Secretary of Health and Human Resources for improvements to the State's regulatory system for child day care should consider the appropriateness of deleting the current exceptions to the definition of a family day care home.

Educational Focus of Program. Although many nursery schools and preschools are currently excepted from licensure, they should be regulated as child day care providers. Many children in care at these programs are not sufficiently protected. The 176 nursery school programs, responding to the JLARC staff survey question regarding the number of children in care, indicated that they had a total of 11,582 children enrolled with an average enrollment of 66 children each. Although some nursery schools may be accredited by the Virginia Council of Private Education (VCPE), only 250 of the approximately 900 private schools in the State are accredited. A review of the standards for VCPE accreditation showed that the standards do not include criteria specifically designed to protect the safety and health of the children in care. Instead, they may specify that the program be licensed by the appropriate regulatory authority.

Nursery schools and preschools can also be accredited by the National Association for the Education of Young Children (NAEYC). However, NAEYC accreditation standards focus primarily on the programmatic aspects of the care rather than basic health and safety issues. According to information obtained on the JLARC survey of children's programs, 48 of the 177 nursery schools surveyed were accredited by some organization. According to The National State of Child Care Regulation 1986, 20 states, including Virginia, do not regulate nursery schools and preschools as child day care.

Recommendation (5). The comprehensive proposal of the Secretary of Health and Human Resources for improvements to the State's regulatory system for child day care should consider the appropriateness of deleting the current exception for nursery schools from the definition of a child care center.

Sponsorship of Care. Allowing exceptions or exemptions to regulation based on sponsorship of care also conflicts with the goal of equity and fairness. There are three categories of sponsorship for which regulatory requirements differ — government, hospital, and religious organizations.

Child care centers operated by an agent of a town, city, county, or the State are excepted from licensure. For example, a child care program operated by a public school is excepted from licensure. These programs can include child care centers operated in vocational centers and home economics departments but typically include before- and after-school programs. Fourteen school boards currently have permission from the General Assembly to operate extended day programs. Other school boards allow local government agencies such as recreation and parks departments to operate extended day programs in school facilities under the provisions of §22.1-131 of the *Code of Virginia*, which authorizes boards to permit the use of school property.

Three public school programs were surveyed by JLARC staff in January 1989. At that time, a total of 2,305 children were in care for an average of three hours per day. However, some students stayed for much longer periods of time. For example:

A kindergarten student, who is also enrolled in the extended day program, usually spends 11 hours each day at the school facility. The child spends approximately 3.5 hours in the classroom and the remainder of the time in the extended day program.

Extended day programs that are operated by private individuals or organizations within a public school facility currently must be licensed as a child care center by DSS. An extended day program operated by a private school within its own school facility must also be licensed by DSS. However, extended day programs operated by a government agency such as a recreation and parks department or by the local school board itself do not have to be licensed.

There is one other situation in which the State does not regulate governmental child day care services. The State does not have the legal jurisdiction to regulate day care facilities that are located on federal property or are operated by the federal government. Various branches of the federal government generally regulate the day care facilities on their property. As seen in the case of the Langley Research Center facility, regulatory standards for some federal facilities may not exist. In such instances, the federal government could grant the State concurrent jurisdiction and, therefore, authority to regulate day care.

Hospital-sponsored child care centers that care exclusively for children of hospital employees are excepted from licensure. While the medical service area of the hospital is inspected by health, building, and fire authorities, inspections are not necessarily performed on these child care centers. Health department personnel do not inspect the centers because they are not considered part of the patient or service area of the hospital. Fire and building inspections may not be done because the child care center is not required to have a separate certificate of use and occupancy for its facility or rooms. Thus, no official determination of the number of children that should be in the center at any one time may be made.

The one exemption from licensing requirements is made for religiously-sponsored care. In 1979, the General Assembly enacted this exemption in response to concerns that regulation interferes with the free exercise of religion — a right guaranteed by the First Amendment to the U.S. Constitution. Later that year, secular child care centers brought a lawsuit against the State because they viewed the exemption as violating another portion of the First Amendment — favoring the establishment of religion — and, therefore, placing them at a competitive disadvantage.

Numerous state and federal courts have studied both arguments in the context of maintaining separation of church and state. However, the only ruling which has authority in Virginia relates to the legality of the exemption. Nearly ten years of litigation about the exemption ended in January 1989 when the U.S. Supreme Court declined to review a May 6, 1988 ruling by the 4th U.S. Circuit Court of Appeals. This ruling stated that "accommodations" may be made for religious institutions

without violating the First Amendment prohibition against establishing a religion. The courts have determined that granting an exemption to religiously-sponsored day care facilities is legal, but they have not found that an exemption must be given to religiously-sponsored centers. The General Assembly has the option of requiring licensure of all religiously-sponsored child care centers or continuing to allow the exemption to centers that complete the exemption process.

The examination of whether to continue the exemption was based on two issues. First, is regulation of religiously-sponsored child day care prohibited by Constitutional guarantees of freedom of religion? Second, does the exemption provide for sufficient protection of the children in care?

Virginia courts have not ruled on the authority of the State to regulate; however, this issue has been litigated in other states. Although these rulings do not serve as precedent in Virginia, they are examples to which a Virginia court might look when faced with a similar question. In all but one case, the courts have found that state regulation does not impede the free exercise of religion. The state's goal in protecting the well-being of the children in care was found to be strong enough to outweigh any potential interference with religious practices resulting from regulation. In several of the cases, the courts were unsure if the religious facilities even had a First Amendment claim. At issue was whether or not a child care center operated by a church is a preschool ministry or a secular activity serving church members and other families in the community.

Religiously-sponsored child care centers should be regulated in the same manner as other child care centers. As noted in an informal Attorney General's opinion dated May 16, 1989, the free exercise clause of the U.S. Constitution does not require the State to exempt religiously-sponsored child care centers from licensure:

> The fact that the exemption may relieve a significant governmental burden on religious activity does not mean that the exemption is constitutionally required. "Not all burdens on religion are unconstitutional." United States v. Lee, 455 U.S. 252, 257,102 S. Ct. 1051, 1055, 71 L.Ed.2d 127,132 (1982). The state may place a limitation on religious practices by showing that it is the least restrictive means of achieving a compelling state interest. Thomas v. Review Bd. of Indiana Employment SCC, 450 U.S. 707, 101 S. Ct. 1425, 67 L.Ed.2d 624 (1981).
>
> Thus, courts have upheld licensing requirements for church-run child care centers.

The opinion goes on to conclude that "the free exercise clause does not require the state to exempt church-run centers from licensure."

Therefore, Virginia's authority to regulate religiously- sponsored day care is not at issue. In fact, many religiously- sponsored child care centers in the

Commonwealth support licensure. Despite the availability of the exemption, 133 religiously-sponsored child care centers in Virginia had chosen to be licensed by the Department of Social Services as of March 1989.

The many problems with the exemption process and the exceptions for sponsorship have already been addressed in Chapter III. The children in care at exempt and excepted centers are not sufficiently protected because DSS does not have the authority to investigate concerns at these facilities. In addition, the State does not have the authority to prohibit these facilities from operating when there are problems with the care provided if the centers are either excepted from regulation or have complied with the requirements of the exemption process.

Because children in care are not protected and providers are not treated equitably, these exceptions and the exemption from licensure should be considered for elimination. However, if exclusions to licensure are continued, the Commissioner of DSS should have the authority to ensure that adequate protection of children is being provided by these centers. To this end, the Commissioner should have the authority to investigate all complaints and take injunctive action against any center in which the children in care are at risk.

If the exemption process is continued by the State, the requirements and process should be modified to provide better protection of the children in care. As shown in Table 9, Virginia's exemption requirements for religiously-sponsored child care centers do not offer children as much protection as that offered children in other states where similar programs are also exempt. North Carolina, for example, re-

Table 9

Exemption Requirements for Religiously-Sponsored Child Care Centers in Selected States

State	Health Inspection	Fire Inspection	Meet Some Licensing Standards	Criminal Records Check	Inspection by Regulatory Staff Before Exemption Granted
Georgia	Yes	Yes	Yes	Yes	Yes
Indiana	Yes	Yes	Yes		
New Jersey	Yes	Yes	Yes		
North Carolina	Yes	Yes	Yes	Yes	Yes
Virginia	Yes	Yes			

Source: JLARC staff analysis of *Code of Virginia* and other states' laws and licensing standards.

quires a religiously-exempt center to meet all licensing standards except those for staff development and qualifications and program activities. Personnel who are employed in an exempt center in North Carolina must have criminal records checks and the exempt center is inspected by regulatory staff to ensure its compliance with all exemption requirements before the exemption is granted.

Recommendation (6). The comprehensive proposal of the Secretary of Health and Human Resources for improvements to the State's regulatory system for child day care should consider the appropriateness of current exceptions and exemptions. To ensure adequate State protection of children in day care and to equalize the impact of regulation on all types of care, as expressed in HJR 116 and SJR 41, the proposal should consider: (a) deleting the exception related to hospital sponsorship from the definition of a child care center; (b) requiring that day care programs and services operated by State and local governments be regulated; and (c) discontinuing the exemption for religiously-sponsored child care centers.

If the option for exemption for religiously-sponsored child care centers is continued, the proposal should, as a minimum: (i) authorize DSS to conduct on-site inspections at the time of initial application and annually thereafter, and (ii) include criminal records checks of staff.

If exclusions to licensure as a child care center are continued, the proposal should consider granting the Commissioner of DSS the authority to investigate all complaints at excepted or exempt child care centers. In addition, the proposal should consider granting the Commissioner of DSS the authority to seek injunctive action in instances in which children are found to be at risk.

Limiting Intervention into Family and Private Agreements

In some instances, the goal of protecting children may need to be balanced with concerns about intrusions into purely family or other private agreements for the care of children. Recognizing this balance, there are three child day care situations where State regulation does not appear to be appropriate — care provided by relatives, in-home care, and cooperative care arrangements.

Relatives. Relatives are not currently regulated as day care providers unless they keep enough children to be licensed as a child care center. This appears to be an appropriate limitation of State regulation. The State's interest in protecting children from relatives via child day care regulation differs from its goal of protecting children from other types of providers. In the case of relatives, parents should have knowledge of criminal histories as well as access to all areas where children will be kept. Thus, they should be able to protect their children as well as, or better than, the State.

In-Home Providers. It would be both intrusive and unenforceable for the State to place requirements on child care situations in the child's own home.

Therefore, in-home day care providers should not be regulated by the State. If parents choose to bring someone into their own home to provide day care, they must take the responsibility for screening the caregiver. Although parents may not have knowledge of these providers' criminal histories, they can request that the provider supply them with a criminal records check from the Department of State Police. In the absence of regulation, the State could assist parents in understanding what to look for in a provider and how to evaluate the qualifications of providers they are considering.

Cooperative Arrangements. Child day care is sometimes provided through cooperative agreements where there is no payment for services. Instead, the parents of children in two or more families take turns providing care. Parents make these arrangements with trusted friends or neighbors, not with people who are in the business of providing day care services. Therefore, parents must be responsible for screening the other caregivers. The State could not effectively regulate these providers and should not attempt to do so.

Recommendation (7). The comprehensive proposal of the Secretary of Health and Human Resources for improvements to the State's regulatory system for child day care should consider the appropriateness of requiring that all programs and individuals providing child day care be regulated. However, consideration should be given to an exception for three types of care: family day care provided to relatives only, in-home care, and cooperative arrangements.

V. Reconsidering the Regulatory System

In evaluating ways to improve the regulatory system three primary questions were considered:

- What optional forms of regulation could be used by Virginia?
- How can day care settings be distinguished for regulatory purposes?
- What form of regulation may be most appropriate for each setting given the proposed principles and goal for State regulation, as well as implementation and cost concerns?

The assessment of regulatory forms by JLARC staff was based on the regulatory goal of protection of all children in child day care. Of the regulatory forms considered, licensing provides the highest level of protection for children. Licensing requires inspection and adherence to standards prior to operation and therefore would be the preferred form of regulation.

However, because of limits on resources and concerns about the availability of care, licensing may not always be a viable alternative for regulation for all types of child day care. In some instances, other less restrictive regulatory forms may be practical alternatives to licensing. Registration also meets the goal and principles for regulation of child day care in Virginia. It can be a suitable regulatory alternative for some types of child day care. Implementing both licensure and registration would allow the State the flexibility to provide a minimal level of protection that is appropriate for the different types of child day care in Virginia.

WHAT OPTIONAL FORMS OF REGULATION COULD BE USED BY VIRGINIA?

There are five regulatory forms or options which could be used to regulate child day care in Virginia. These forms are licensure, registration, certification, credentialing, and accreditation. Each has its advantages and disadvantages. Licensure and registration are the optional forms that best satisfy the proposed principles and goal for regulation. These forms offer flexibility in terms of monitoring the individual, the setting, and the program.

Possible Forms of Regulation

The main focus of child day care regulation can be on the individual, the physical setting, or the program. However, these distinctions can be blurred. For instance, regulation of the setting or the program usually includes requirements for the individual providing care as well. Distinctions between the regulatory forms can be unclear because the forms are typically designed to meet the objectives of the regulatory authority. However, the regulatory forms do offer different levels of protection.

Licensure. Licensure is the most common form of child day care regulation in the United States. Licensure generally requires the individuals or staff, the day care facility, and possibly the program to meet certain requirements (standards) and to be examined or inspected before being granted permission to operate. Because the individual or center cannot provide care before meeting the regulatory guidelines and examination, licensing is described as being preventive in nature.

In order to maintain the license, the provider must continue to meet the standards and be inspected on a routine basis. Thus, licensure ensures the protection of the children before they are in the day care setting. According to the report, The National State of Child Care Regulation 1986, all 50 states license child care centers.

The primary advantage of licensure is that all components of day care — the day care provider, the facility, and the program — have met and must continue to meet standards that at least minimally protect the children in care. In addition, standards can be enforced through a variety of sanctions including revocation of the license.

There are several possible disadvantages to licensure if it is improperly implemented. Standards which are difficult for providers to meet may result in potential providers deciding not to initiate a day care operation or to operate illegally. If licensing standards are unreasonable, they can restrict the availability of care. In areas where there is little day care, the closing of the few day care programs available because of failure to meet stringent licensing standards could seriously affect the safety of the children and the accessibility of care. However, when licensing standards are properly focused on the protection of children, licensing can be a viable regulatory alternative.

Registration. Registration as a regulatory form for child day care developed, in part, to address the objections of both the public and providers that licensing regulations were too burdensome for some providers. Initially, registration was considered to be a form of deregulation of the child day care industry. Registration can, however, expand regulation because it is typically applied to a large number of providers not previously regulated. Nationally, registration is used only to regulate family day care homes.

Registration is largely a form of self-regulation and can be either voluntary or mandatory. It usually includes the monitoring of a sample of the day care providers by the regulatory authority, a centralized listing of providers, and readily available parent information. There is also typically a reliance on parents to perform the majority of the monitoring of the day care.

Of the 15 states surveyed for this study, seven states use registration to regulate family day care homes. Registration can be implemented in different ways and with different levels of protection for the children in care. In some states such as Maryland, family day care home registration is simply licensure by a different name. Regulations and standards for home providers are still promulgated, and inspections occur on a routine basis. The difference between licensure and registration in this situation is that the inspections are not made before the provider is given permission to operate. The provider supplies the regulatory authority with the required materials and after review and approval, the provider is registered. An inspection occurs at a later time and is typically of a technical assistance nature unless life-threatening safety or health concerns are noted.

In other states such as Delaware, registration simply requires providers to voluntarily attest to the health and safety of their day care setting. No routine inspections occur as part of the regulatory process. This type of registration is sometimes called "self-certification." It provides limited protection to children, and there is limited involvement by the regulatory authority.

Advantages of registration include a reduced perception of intrusion by the government, with some minimal level of protection. If registration is properly implemented, the family day care homes are known to the regulatory authorities and must meet some minimal standards to be registered. Registration can raise parental awareness of what constitutes good care. It also gives parents an authority to which they can express concerns about substandard care, and the regulatory authority can take appropriate action against the provider if necessary. Registration does not act as a barrier to entry, because individuals do not need to meet any requirements before they provide care for children.

One disadvantage of registration is that it can be perceived as an expansion of government regulation. Another disadvantage to registration is that less protection is provided by the regulatory authority for the children in care in terms of the number of inspections and the complexity of the standards. In some cases, an inspection is only conducted if a complaint is made against the provider. Parents are relied upon to provide the primary monitoring of the care. In addition, if registration is implemented on a voluntary basis, unregistered providers may continue to operate.

Certification. Certification is primarily used to perform fiscal monitoring of in-home providers, homes, and centers that receive federally appropriated money for child day care. Typically, it requires compliance with standards and includes inspection and monitoring. When a state uses Social Services Block Grant (SSBG)

funds or other federally funded programs to provide funding for child day care, the provider must be regulated by the state. This state regulation is typically referred to as certification. Five states regulate only family day care homes that are certified for subsidized care.

Like registration, certification can be voluntary or mandatory. Thus, like voluntary registration, certification does not prevent unregulated providers from offering child day care. Certification only applies to providers who receive government funds. It is not uncommon for an unregulated provider to become certified in order to be paid to care for the same child that was kept previously. In Virginia, government-sponsored centers can also be "certified as licensed" in order to receive public funds. None of the 50 states uses certification as a primary form of regulation of day care.

Credentialing. Individual providers can pursue credentialing through the Child Development Associate National Credentialing Program. Some nanny training schools also credential in-home providers after they have completed their training program. The only identified nationwide association for in-home providers, the International Nanny Association, does not currently credential its membership or require a credential for membership.

Credentialing does not regulate the facility or the program. In addition, it is typically a voluntary process which providers may choose to pursue.

Accreditation. Accreditation of child day care is an acknowledgement by an accrediting group that a program meets specified standards. Accreditation is based on the concept of self-policing by the providers themselves and by their peers. Accreditation does not grant permission to operate, it is a voluntary evaluation. Two states use voluntary accreditation to promote and recognize quality child day care programs that meet standards which are higher than those the states require for licensure.

The focus of accreditation as a regulatory form is high quality programming. It is not typically a practical way to regulate child day care. Accreditation standards can be too high for many providers to meet. In addition, the accrediting group usually requires that the day care program be in operation for at least one year before applying for accreditation and that it also be regulated by the state or locality.

For example, the National Association for the Education of Young Children (NAEYC) requires that a program be "licensed by the appropriate state/local agencies or if exempt from licensing, demonstrate compliance with its own state's standards for child care centers subject to licensing...." to be eligible for accreditation. The NAEYC offers the only national accrediting system for child care centers and nursery schools through its National Academy of Early Childhood Programs.

The National Association of Family Day Care began accrediting family day care providers in 1988. This process is also primarily a self-evaluation with input

from parents and an evaluator from the association. This national association also requires that providers meet their state's mandatory and voluntary regulatory requirements and submit documentation of this at the time of application.

In Virginia, nursery schools and private schools may be accredited through the Virginia Council for Private Education (VCPE). The council's Commission on Accreditation began accrediting nonpublic schools in July 1987 when the State Board of Education transferred this responsibility to the council. The council currently supervises seven accrediting associations, each with its own set of standards and evaluation procedures. The Virginia Council for Private Education also states in its proposal for the regulation of child care in Virginia, "It is appropriate for the Commonwealth of Virginia to regulate health and safety standards for children being cared for outside their own homes."

Assessment of Regulatory Forms

In assessing which regulatory forms could be used by the State, the goal of protecting the children in care was assumed to have the highest priority. All of the forms discussed previously will protect the children in day care to some degree. However, not all of the forms are flexible enough to regulate all providers, facilities, and programs currently operating in the State, nor will they easily adapt to future changes in the day care industry. In addition, some of these forms do not lend themselves to uniform application or to reasonable and enforceable implementation. Thus, even though the forms can be broadly applied, they do not offer enough protection to children and should not be used.

Advantages of Licensure and Registration. As shown in Exhibit 6, licensure and registration are the most flexible of the regulatory forms. Both regulatory forms focus on the facilities, the individuals providing care, and the programs. However, they are different in their requirements for specific regulatory actions (Exhibit 7).

The other forms are not as flexible in their application. Certification focuses on the facility and the individual only. Accreditation's primary focus is on the program. Credentialing focuses only on the individual providing the care.

In addition to flexibility, licensure and registration offer the most protection for children because they can focus on all components of the care. Further, as shown in Exhibit 6, licensure and registration can also be based on the principles of uniform application and reasonable and enforceable implementation. Thus, every day care provider in every facility with any type of day care program could be licensed or registered by the State.

Conversely, certification does not offer the flexibility of licensure and registration, because it is typically applied only to providers who care for public fund

Exhibit 6

Comparison of Regulatory Forms

	Goal	Regulatory Focus			Principles Met		
Form	Protects Children	Facility	Individual	Program	Flexibility	Uniform Application	Reasonable and Enforceable Implementation
Licensure	✓	✓	✓	✓	✓	✓	✓
Registration	✓	✓	✓	✓	✓	✓	✓
Accreditation	✓			✓			
Certification	✓	✓	✓			✓	✓
Credentialing	✓		✓				

Source: JLARC staff analysis.

recipients. Credentialing is not necessarily available to all providers because no one organization credentials the various types of day care providers.

Accreditation relies on other regulatory forms to ensure minimal protection in terms of the individual and the facility. In addition, accreditation may be prohibitive to some day care providers because of its cost. Accreditation by definition means to "recognize as outstanding," and the first objective in State regulation should be to ensure minimal protection, not high quality programming. The State can support quality through other avenues besides regulation, such as provider training and parent education. It is not reasonable to expect all providers to offer high quality programs or to expect parents to be able to afford that quality. Thus, the use of accreditation could affect the availability and affordability of care.

Necessary Changes to Current Licensure. If licensure is used to regulate any type of child day care in Virginia, changes will need to be made to its current structure. As discussed in Chapter III, licensure as implemented in Virginia currently is inflexible, cannot be broadly applied, is not uniform, and is not always reasonable or enforceable. Some modifications would be necessary for licensure to be used more successfully in the future.

There appear to be two main problems with current licensure in Virginia: (1) the regulatory standards that providers must meet in some cases exceed what may be required to protect the health, safety, and well-being of the children in care, and (2) other standards may not offer enough protection when diverse groups are licensed. Licensing standards should only include those that are necessary to protect the safety, health, and well-being of the children in care. In addition, the standards should be as consistent as possible for all day care settings, and should not be burdensome to providers or difficult to enforce.

Exhibit 7

Comparison of Licensure and Registration Requirements

Requirement	Licensure	Registration
Must have permission to operate prior to providing care	✓	✓
Must be inspected prior to providing care	✓	
State authorities have right to intervene and monitor	✓	✓
Must meet regulatory standards for:		
• staff qualifications	✓	
• criminal records check	✓	✓
• health and safety requirements	✓	✓
• program requirements	✓	

Source: JLARC staff analysis.

Current literature on regulatory standards for day care suggests that standards must be easily measured and consistent over time. Such criteria as staff-to-child ratios and timely health, fire, and building inspections are examples of such standards. These standards are also necessary for the protection of children. Many of Virginia's current standards appear not to be minimums but instead are designed to educate providers on "ideal" business practices and parents on "quality" day care. An example of this is the child care center licensing standard that requires a personal interview between the parent, the child, and a staff member of the licensed center before the child can be enrolled.

As described in the report "Child Welfare Licensing: Keeping Pace With the 80's; Being Prepared for the 90's,"

> A limited number of rules which are directly related to the protection of children that are easily enforceable and measurable offer a much greater level of protection than do a greater number of rules. Licensing specialists have more time during their inspections to assess and enforce the rules and their credibility is improved because they can enforce the standards and have a consistent interpretation year after year.

Components of Registration. If registration is used as a regulatory form in Virginia it should include certain protective measures for the children in care. These measures are: biographical information about the provider, information about the number of children in care, a criminal records check, and a safety and health

evaluation checklist. No inspection should be required prior to the provider being considered registered. If an inspection were required before the program could begin operation, registration would in fact be licensure and could possibly constrict the availability of care by making it unavailable or forcing it to go "underground."

The registration application should include biographical information about all providers of care and other information concerning the number of children in care who are both related and unrelated to the providers. The safety and health evaluation checklist should include standards that address the health and fire safety of the facility and the health of the providers and children. This same checklist should be used by the regulatory authority when conducting any subsequent inspections.

In addition to increasing the numbers of providers for which criminal records checks will be required, consideration should be given to expanding the types of crimes that are checked. Section 63.1-198.1 of the *Code of Virginia* currently specifies that the following crimes will be checked:

- murder
- abduction for immoral purposes
- sexual assault
- failing to secure medical attention for an injured child
- pandering
- crimes against nature involving children
- taking indecent liberties with children
- neglect of children
- obscenity offenses.

From July 1, 1986, to March 9, 1989, the Department of State Police has identified only nine individuals with convictions for these crimes out of 47,534 child day care applicants.

However, between July 1, 1985 and April 1986, 355 other convictions were identified but could not be reported to the Department of Social Services (DSS). These included assault, use and distribution of drugs, fraud, robbery, larceny, and threatening harm. Thus, there may be State-licensed child day care providers who have criminal records for crimes, including felonies, other than those currently checked. The General Assembly may want to broaden the types of crimes included in the criminal records check.

Recommendation (8). The comprehensive proposal of the Secretary of Health and Human Resources for improvements to the State's regulatory system for child day care should consider including additional felonies and other serious crimes in the criminal records check that is performed using the Central Criminal Records Exchange.

HOW CAN DAY CARE SETTINGS BE DISTINGUISHED?

The physical settings where day care programs take place are varied and diverse. These settings range from a family's home where a few children are cared for to a large, complex building specifically designed for providing day care. Before a final choice between licensure and registration can be made, settings must be distinguished and defined. Consideration must be given to questions such as: How can a child care center be defined for regulatory purposes? Should there be a distinction in family day care homes because of the number of children in care?

In determining how to define these settings so that the definitions can be applied to a broad spectrum of day care programs, two criteria were considered: the facility in which the care is offered and the number of children in care within the facility. The goal of protecting children in care does not suggest the use of any particular criterion or number. Thus, to some extent, criteria and numbers could be set arbitrarily. However, other regulations promulgated by the State that child care centers and family day care homes are required to meet can be used to set these criteria. In this way, the State can achieve some consistency in regulations. Because day care providers must already comply with the State's building code, it is useful for defining settings of care. In addition, State Board of Health regulations and definitions promulgated by other states for regulatory purposes also provide guidance.

Distinctions Between Centers and Homes

Historically, child day care has been thought of as occurring in either a home setting, typically referred to as a family day care home, or in an out-of-home setting, typically referred to as a child care center. There are differences in these facilities which require them to be defined differently and often regulated differently.

Facility Design. Centers are typically built for the purpose of providing child day care or for a purpose other than use as a family's home. In some cases, a residential structure is used as a child care center but structural changes may be necessary for the protection of the children in care.

The Uniform Statewide Building Code (USBC) requires that all child care centers meet the building and fire safety requirements of an institutional (Use Group I) or educational (Use Group E) building (Exhibit 8). For example, a nursery school within a church should be regulated as a Use Group E building according to the USBC. Family day care homes fall into the residential building code category (Use Group R) because they are the providers' private homes. Currently, however, a house would have to meet the requirements for institutional or educational use if it were being used to provide care for more than nine children.

Exhibit 8

Explanation of Uniform Statewide Building Code Terms

Use Group E — "All buildings and structures, or parts thereof, ... which are used by more than five persons at one time for educational purposes through the 12th grade including, among others, schools and academies." A child care facility which provides care for more than five persons older than two and one-half years of age is classified as Use Group E.

Use Group I — "All buildings and structures, or parts thereof, ... in which people suffering from physical limitations because of health or age are harbored for medical or other care...." A child care facility which accommodates more than five children who are two and one-half years of age or younger is classified as Use Group I.

Use Group R — "All buildings or structures, or parts thereof, ... in which families or households live, or in which sleeping accomodations are provided for individuals...." This use group includes hotels, multiple single-family dwellings, dormitory facilities, and child care facilities that accommodate five or fewer children of any age. In 1985, the State Building Code Technical Review Board expanded this definition to include family day care homes that are licensed by DSS.

Source: JLARC staff analysis of The BOCA National Building Code/1987.

Local building officials and fire marshals also rely on DSS to develop and ensure that necessary functional design requirements for child care centers are in place and will protect the children in care. This DSS responsibility is mandated in §36-98 of the *Code of Virginia*. These functional design requirements include activity space per child, number of toilets within the building, and so forth. Neither DSS nor the USBC has set any similar requirements for family day care homes. While licensed child care centers are inspected by the Department of Health, some unlicensed centers are not. In addition, licensed family day care homes are not currently inspected by the Department of Health unless they are notified of the possibility of a serious health concern.

DSS functional design responsibility also affects how the USBC defines family day care homes. The USBC currently accepts the definition of a family day home that is set out in §63.1-195 of the *Code of Virginia*. This section states that a family day care home means "any private home in which more than five children, except children related by blood or marriage to the person who maintains the home, are received for care...." The *Code of Virginia* does not specify a maximum number of

children that can be cared for in a family day care home. Instead, DSS has established this number at nine (or ten if some of the children are of school-age and in part-time care) in the minimum standards for licensed family day care homes.

Number of Children In Care. The task of protecting the children in a child care center is typically more difficult than in a family day care home simply because of the greater number of children in care. Because of the large number of children and the diverse needs they may have, more rooms, more staff, and varied program activities may be necessary. These needs, in turn, create additional safety concerns. Based on the JLARC staff surveys of providers, a child care center on average had 69 children in care while a regulated family day care home averaged 5.7 children in care.

Other states also differentiate between child care centers and family day care homes and may also regulate them differently. Louisiana is the only state that has no regulatory definition for any type of family day care home.

Thus, child care centers should be defined separately from family day care homes. It is relatively easy to define care that is being provided in a non-residential building as a child care center because the building must meet USBC requirements. Determining when care provided in a residential building should meet the requirements of a child care center is more difficult. A maximum number of children allowed in a home before it meets the definition of, and must be regulated as, a child care center should be determined.

Currently, children who are related to the family day care provider are not counted in determining subjectivity to licensure as a family day care home. Related children (other than the provider's own children) are counted in determining whether a provider should be licensed as a child care center. As noted in Chapter III, this inconsistency in treatment of related children is quite confusing. It also means that some children in family day care homes are not adequately protected if at all. Consequently, all related children should be counted when determining the maximum number of children that can be cared for in a family day care home.

In order to include related children and not constrict the availability of child day care in family day care homes, the maximum number of children allowed in care in a family day care home before it meets the definition of a child care center should be raised from nine to 12. This figure is based on findings from the JLARC staff survey of providers which indicates that providers who are caring for more than five children had an average of 2.0 related children in care. By increasing the total number of children that can be cared for in a family day care home from nine to 12, related children in care would generally be accounted for in any new definition of a family day care home. Thus, the majority of family day care homes that are currently licensed would not have to be regulated as child care centers under the new regulatory system.

Twenty-four other states also use 12 as the maximum number of children allowed to be cared for in a family day care home. The State Board of Health uses 12

as the maximum number of recipients of service before a home has to meet stricter restaurant code requirements also. Thus, the use of 12 as the maximum number of children in a family day care home is supported by definitional requirements in other states and by other regulations that child day care providers in Virginia must meet.

Because a separate, generic definition of child day care has been proposed in this report, the current definition of a child care center in the *Code* would not be appropriate, and a new definition should be considered as part of the restructuring of the regulatory system. Such a definition could be based on the requirements of the USBC.

Recommendation (9). The comprehensive proposal of the Secretary of Health and Human Resources for improvements to the State's regulatory system for child day care should consider defining a child care center as any program of any capacity that provides child day care within a non-residential building, and any program with a capacity of 13 or more that provides care in a residential building.

Distinctions Among Family Day Care Homes

Within family day care homes, the number of children in care may be important in determining regulatory treatment. The USBC supports a regulatory distinction, and other states have adopted regulatory provisions that recognize the number of children in care.

The General Assembly, by increasing the number of children allowed to be in care to six unrelated children for definitional and regulatory purposes, recognized the regulatory distinction between a family day care home caring for a large number of children and one caring for a small number of children. State fire and building officials have also recognized this distinction.

According to State fire and building officials, there are additional health and fire concerns in family day care homes in which six or more children are being provided care. The USBC could require them to meet the same building and fire requirements as a child care center. However, the State Building Code Technical Review Board is aware that DSS does require compliance with fire and building requirements through the licensing standards for family day care homes and subsequently through functional design responsibilities. In 1985, the board recognized this regulatory protection by DSS and ruled that "when limited to nine children in accordance with Department of Social Services licensing requirements, the classification shall be Use Group R." (Increasing the total number of children in care to 12 may require a reconsideration of this ruling.)

Homes caring for six or more children are also seen as different from smaller homes by at least 34 states. Caring for more than six children raises safety concerns that caring for fewer children may not. For example, in an emergency a

provider caring for six or more children may have greater difficulty evacuating the children from the home than a provider caring for fewer children. Thus, a distinction based on the number of children in care in family day care homes should be made for definitional and regulatory purposes.

According to the 1988 Family Day Care Licensing Study, 32 states and the District of Columbia begin their definition and regulation of a family day care home at one unrelated child in care (Figure 10). In 23 of these states and the District of Columbia, such regulation is mandatory for all homes. Virginia is one of four states that do not regulate family day care homes caring for five or fewer children. In five states, regulation is mandatory only for homes receiving public funds. Regulation is voluntary in only four states — Idaho, Iowa, New Jersey, and Oregon.

While Virginia does not currently regulate family day care homes that care for five or fewer children, the State has historically recognized them as day care providers and allows them to be approved by family day care systems and local departments of social services. For regulatory purposes, the State should consider defining a "small day care home" as a home in which child day care is provided for at least one unrelated child, but no more than five. A "group day care home" should be defined as a home in which between six and 12 children are in care. This definition would include those homes currently licensed as day care by the State.

Recommendation (10). The comprehensive proposal of the Secretary of Health and Human Resources for improvements to the State's regulatory system for child day care should consider defining a group day care home as a residential building used to provide child day care to no less than six but no more than 12 children (including those related to the provider).

Recommendation (11). The comprehensive proposal of the Secretary of Health and Human Resources for improvements to the State's regulatory system for child day care should consider defining a small day care home as a residential building used to provide child day care to five or fewer children (including those related to the provider).

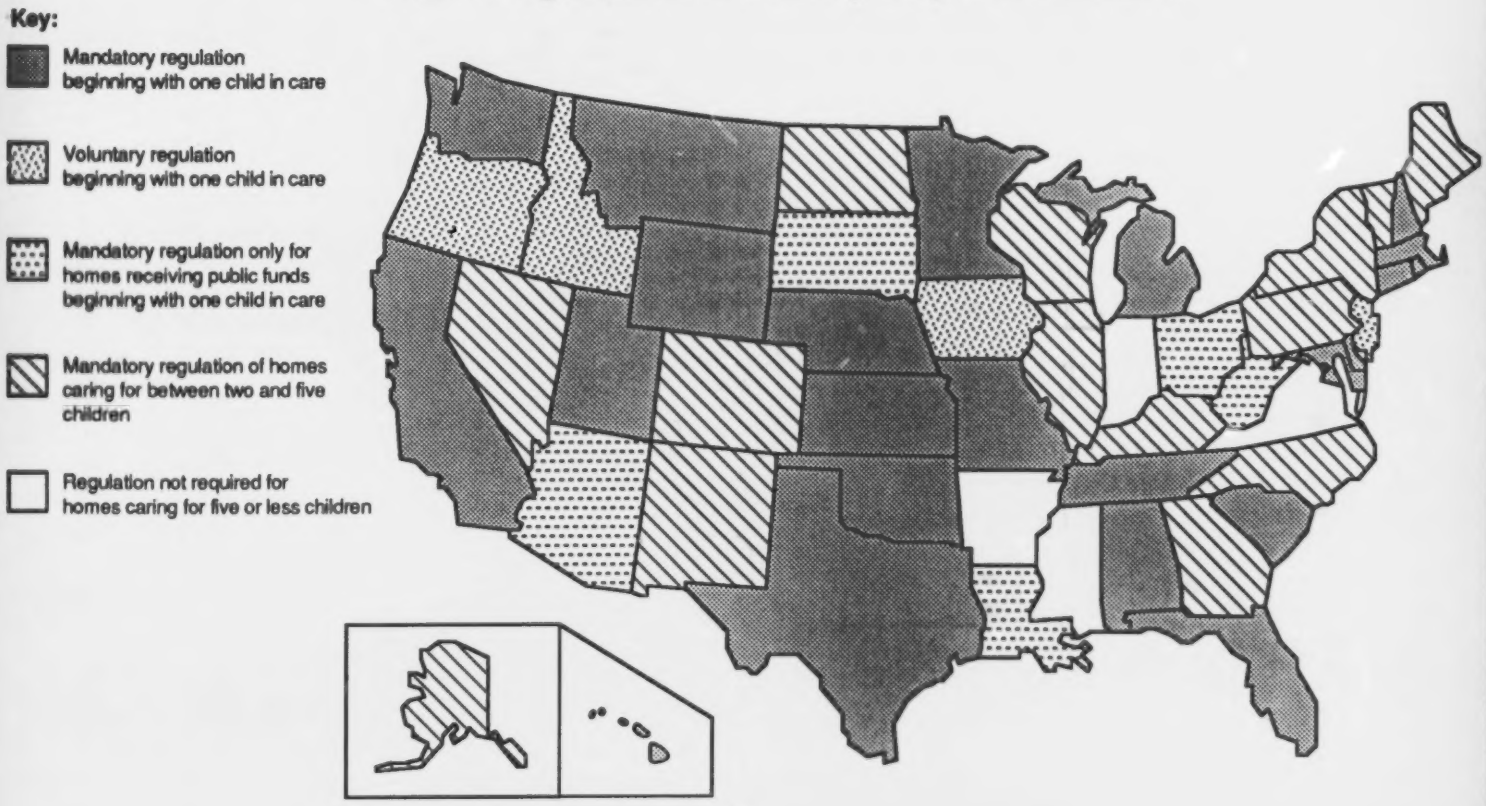
WHAT FORM OF REGULATION MAY BE MOST APPROPRIATE FOR EACH SETTING?

Given the goal to protect all the children in care, licensure should be the preferred form of regulation because it affords children the greatest protection. However, in order for the State to provide for realistic and enforceable regulation of the child day care industry, it must make certain tradeoffs. Concerns such as the cost of regulation and the impact on availability and affordability must also be considered.

JLARC staff estimate that there are 1,721 child care centers and nursery schools, 650 school-based extended day programs, 41,728 family day care homes, 281

Figure 10

State Regulation of Family Day Care Homes


Key:
Mandatory regulation beginning with one child in care
Voluntary regulation beginning with one child in care
Mandatory regulation only for homes receiving public funds beginning with one child in care
Mandatory regulation of homes caring for between two and five children
Regulation not required for homes caring for five or less children

Source: JLARC staff analysis of The Children's Foundation report, 1988 Family Day Care Licensing Study.

in-home providers receiving public funds, and 242 "other" programs that can be defined as day care and regulated by the State. To license all of these child day care programs, JLARC staff estimate that it would cost the State more than $20 million annually if caseload standards for regulatory staff are based on NAEYC recommendations. Additional funds in excess of $3 million would be required for first-year, start-up costs. (A detailed summary of the steps used to calculate the cost of regulation can be found in Appendix C.)

Because the cost to license all child day care providers appears to be excessive and licensure might reduce availability of care, alternatives to licensing appear to be necessary. The settings in which the largest number of children can be in care should be licensed. These settings are child care centers and group day care homes. Because of the limited number of children that can be cared for in each home, small day care homes can be registered by the State and still offer the children greater regulatory protection than they are currently receiving.

Licensure of Child Care Centers

The State should continue to license child care centers. Licensure is necessary for child care centers because of the number of children in care. In addition, no other regulatory authority inspects the program for child-specific concerns, and assurance is needed on a continual basis that minimum standards continue to be met. In order for licensure to be successfully implemented however, the current standards should be revised and additional safety measures taken.

Need for Licensure. A child care center should be inspected by DSS licensing specialists and have the State's permission to operate as a child care center before beginning to provide care. Licensure would ensure that a minimal level of protection for all children is being maintained. It would ensure that the center has taken precautions in such areas as staff and equipment for every age child in care. In addition, licensure ensures that this protection is continuously provided. Thus, even though the staff providing the care may change, the facility, the program, and the new staff meet the same requirements, and protection is still provided.

Licensing also guarantees that at least one regulatory authority is inspecting annually. In some localities, fire marshals will only inspect a facility if there is a complaint. If a center, such as an after-school program, is not providing meals, the health department might not inspect either. Thus, without licensure, the child care program might not be monitored for extended periods of time.

Recommendation (12). The comprehensive proposal of the Secretary of Health and Human Resources for improvements to the State's regulatory system for child day care should consider continued licensure of all child care centers by the Commissioner of Social Services.

Improvements and Refinements in the Implementation of Licensure. As discussed previously in Chapter III, questions about the appropriateness of standards have been raised by regulatory staff and the providers of child day care services. In order for licensure to be an effective form of regulation, these concerns will need to be addressed.

Revisions should be made to the current standards so that they focus on the health, safety, and well-being of the children in care. The standards should also allow for flexibility in day care programs so that allowable variances will not be as necessary as they currently are in order for some child day care programs to maintain their licenses.

In addition, because some local fire marshals only inspect child care centers when a complaint is received, consideration should be given to mandating an annual fire inspection of all child care centers to further ensure the safety of the children. The *Code of Virginia* currently requires homes for adults to be inspected annually by a fire marshal. Even though licensing specialists can ensure other protections, they are not fire and building safety experts.

The building code requires that a sign be posted in each room of certain facility use groups. Educational buildings are already required to have these signs. By requiring fire officials to inspect all child care centers each year, occupancy loads can be determined for each room within the center and the children's safety can be further ensured.

Recommendation (13). The comprehensive proposal of the Secretary of Health and Human Resources for improvements to the State's regulatory system for child day care should consider directing the Child Day-Care Council to review and amend as necessary the child care center licensing standards. The council should ensure that standards address the health, safety, and well-being of children in care, and intrude to the least possible extent into legitimate activities of private businesses and citizens.

Recommendation (14). The comprehensive proposal of the Secretary of Health and Human Resources for improvements to the State's regulatory system for child day care should consider requirements for annual fire safety inspections of child care centers and the posting of occupancy loads in each room within centers.

Recognizing Special Population Child Care Centers. In order to ensure that licensure meets the State's principles for regulation, additional actions besides the revision of current center standards and mandating annual fire marshal inspections can be taken. Licensure can be made more flexible by recognizing special population child care centers and promulgating standards for their licensure.

The Child Day-Care Council has recognized that separate center standards should be promulgated for special population programs such as occasional care

programs and before- and after-school programs. Occasional care programs and mothers' morning out programs offer respite services to parents who may not typically use day care. While these child care centers should be licensed, the standards used to do so should be designed for the specific purpose of the program. For example, the requirement for playground equipment or food preparation facilities is not applicable to a program located in a shopping mall.

School-age child day care is provided in a number of different settings: recreation and parks facilities, school buildings, and Boys Clubs and Girls Clubs. Many of these programs should be licensed by the State as child care centers, but the standards should focus on minimal protection for school-age children. The average age of the children in care in these programs is much higher than that for most child care centers. A standard requiring a director of a school-age program to have a degree in early childhood education is obviously inappropriate. School-age standards should recognize such differences as personnel qualifications, equipment needs, nap facilities and requirements, and immunization records.

Recommendation (15). The comprehensive proposal of the Secretary of Health and Human Resources for improvements to the State's regulatory system for child day care should consider directing the Child Day-Care Council to promulgate separate child care center licensing standards for programs that serve special populations such as school-age children or children in occasional care.

Extending the Licensing Period. The current licensing period is one year. Within this year, DSS licensing specialists are required to conduct one unannounced monitoring visit and one announced visit to conduct the renewal study. Currently, DSS does not appear to be licensing providers on a timely basis. Table 10 provides a summary of licenses not acted upon for March 1989. More than 55 percent of license renewals were not acted upon during this month.

Extending the licensing period to two years would reduce required administrative paperwork, and permit more timely monitoring of centers. Adopting a two-year licensing period would not necessarily mean that the children in care would be provided a reduced level of protection, however. In fact, it should help ensure that licenses are renewed and issued on a timely basis, allow licensing specialists to spend more time conducting visits, and also reduce the amount of time licensing specialists currently spend on paperwork. Centers would not have to start the renewal process every ten months and would not have to operate on expired licenses as they do currently.

An interagency study conducted in 1987 by the Department of Planning and Budget, Department of Personnel and Training, and Department of Information Technology, stated that the amount of time spent in processing renewal applications and reissuing licenses is not as effective in protecting those in care as time spent conducting facility visits. The study noted that "the majority of DSS child licensing specialists agree that unannounced visits are their most effective regulatory tool.

Table 10

License Renewals for March 1989
(renewals only)

	Child Care Centers	Family Day Care Homes
Active Licenses During Month	287	59
Licenses Carried Over to Following Month	160	34
Percentage Not Acted Upon	56%	58%

Source: JLARC staff analysis of March 1989 DSS monthly licensing statistical report.

However, they report that unannounced supervisory visits are the first to go during hectic periods."

Based on recommendations made in this 1987 study, the *Code* was amended to require at least one unannounced visit each year to licensed child day care facilities and additional clerical staff were hired to ease part of the paperwork problem. However, the study also recommended that there be no limitation on the length of time a license would be valid, a concept known as perpetual licensing.

A time log kept by licensing specialists for the interagency study also indicated that although 55 percent of licensing specialists' time was spent on routine, direct licensing, only 16 percent of this was spent conducting inspections of facilities. Ten percent of the time was spent on documentation. By having a two-year licensing period, the amount of time spent on paperwork would be reduced because one less "renewal" supervisory visit would be required every two years. An unannounced inspection, as mandated in the *Code*, would be conducted at least once each year and could be conducted as often as necessary to ensure the protection of the children in care. Thus, every licensed facility would have to be inspected at least three times during the two-year period.

A review of the licensing periods in each of the 50 states was also conducted. Approximately 30 percent of other states have at least a two-year licensing period. Most states also specify that inspections must occur upon complaint.

When someone has concerns about the care being provided a child, there should be some guarantee that the complaint will be investigated and appropriate action taken by the State. Section 63.1-210 of the *Code of Virginia* gives the

Commissioner of DSS the authority to inspect all licensed facilities at reasonable times. This authority should be further strengthened to ensure that all complaints are investigated and that DSS staff can interview children and center staff in private.

Recommendation (16). The comprehensive proposal of the Secretary of Health and Human Resources for improvements to the State's regulatory system for child day care should consider lengthening the licensing period for child care centers to two years. In addition, the proposal should consider requirements that all complaints against child day care facilities be investigated.

Licensure of Group Day Care Homes

Group day care homes should also continue to be licensed by the State. While the need to license group day care homes is not as clear as it is for child care centers, these facilities may have large enough numbers of children in care to make registration unsuitable. In order to best protect the greatest number of children in care, these homes should continue to be licensed because they may pose risks to children in care that require the greatest regulatory protection. An estimated 9,000 group day care homes are operating in Virginia. Table 11 shows estimates of the number of children cared for in group day care homes of different sizes.

Table 11

Children Cared For in Group Day Care Homes

Description of Home	Estimated Children in Care	Percentage Total in Group Day Care	Cumulative Number of Children in Care	Cumulative Total in Group Day Care
Caring for Six Children	21,900	34%	21,900	34%
Caring for Seven Children	18,000	28%	39,900	62%
Caring for Eight Children	19,500	30%	59,400	92%
Caring for Nine Children	2,900	4%	62,300	97%
Caring for Ten or More Children	2,200	3%	64,500	100%

Notes: Percentages may not add to 100 due to rounding.

Source: JLARC/VCU survey of parents and JLARC and VCU surveys of providers.

Need for Licensure. Without licensure, group day care homes would not be monitored by any State agency. Registration would not ensure that these homes were inspected each year or prior to providing care.

The study, "What Is Family Day Care?" summarizes some of the unique aspects of group day care homes that result in a need for them to be licensed:

> There seems to be a necessity for more structured activities and more scheduling of those activities. Just keeping track of that number of children makes it necessary for the children and adults to have a different kind of interaction. The environment has to be arranged differently....it takes an experienced, well-organized, and mature adult to balance the needs of all age groups...."

Licensure would ensure that group day care home providers are capable of providing child day care for diverse ages of children, that there is room available to accommodate their needs, and that there is age-specific equipment. Also because of the number of children in care, an assistant may be needed in order to ensure the safety of the children in care. Licensing should ensure that an assistant is being used as necessary and that the individual meets all the regulatory standards for individuals providing child day care.

Licensure of these homes does not appear to be burdensome to providers. Of the licensed providers responding to the JLARC staff survey of providers, only five percent stated that meeting State regulatory standards was a problem.

In addition, licensure of these homes does not appear to increase the cost of care. According to information collected on the JLARC staff surveys of providers, licensing did not appear to "price" licensed family day care above other care being provided in homes. As shown in Table 12, the average weekly charge for licensed family day care was consistently below some other types of regulated and unregulated family day care.

Other states license settings where six or more children are in care. The JLARC telephone survey of 15 other states indicated that 12 of the states license family day care homes in a similar manner. Approximately 30 percent of all states license group day care homes, while only six percent registered or voluntarily license these homes. The estimated cost to license all group day care homes in Virginia would be about $4 million annually, assuming a caseload of 100 homes per regulatory staff member.

Recommendation (17). The comprehensive proposal of the Secretary of Health and Human Resources for improvements to the State's regulatory system for child day care should consider requiring that all group day care homes be licensed by the Commissioner of Social Services. Licensure should also be available on a voluntary basis to in-home providers and relatives providing care in a group day care home setting who wish to receive public funds.

Table 12

Average Weekly Cost of Care In Family Day Care Homes

	Form of Regulation				
Type of Care	State-Licensed	Unregulated	Locally Approved	USDA-Approved	System-Licensed
Infant	$54	$57	$43	$69	$96
Toddler	52	57	41	64	96
Preschool	47	53	38	62	106
School-age	26	29	30	34	83

Source: JLARC and VCU surveys of providers.

Improving Licensure for Group Day Care Homes. As with child care centers, it is important that concerns about standards for group day care homes be addressed. Revisions should be made to the standards to ensure that they provide adequate protection for children and also meet the requirements of Executive Order Number Five. The standards should focus on the health, safety, and well-being of the children in care in group family day care homes.

Recommendation (18). The comprehensive proposal of the Secretary of Health and Human Resources for improvements to the State's regulatory system for child day care should consider directing the State Board of Social Services to review and amend as necessary the family day care home licensing standards. The Board should ensure that standards address the health, safety, and well-being of children in care, and intrude to the least possible extent into legitimate activities of private businesses and citizens.

Extending the Licensing Period. Group day care homes should be required to meet the same licensing period and inspection requirements as child care centers. Thus, they should be licensed for a two-year period and have at least one unannounced inspection each year.

Recommendation (19). The comprehensive proposal of the Secretary of Health and Human Resources for improvements to the State's regulatory system for child day care should consider lengthening the licensing period for group day care

homes to two years. In addition, the proposal should consider requirements that all complaints against licensed group day care homes be investigated.

Registration of Small Day Care Homes

Currently, small day care homes are not regulated by the State. These homes should be considered for regulation through registration by the State so that the children in such care are provided minimal protection. In addition, registration would make training opportunities available to providers and providers' and parents' awareness of safety and health concerns could be raised. Registration would identify providers who are currently unknown to the State; would give the State the regulatory authority to intervene when children's health, safety, and well-being are threatened; and would be a standardized means of informing providers about what constitutes quality care. Registration would also open U.S. Department of Agriculture (USDA) funds to all providers and eliminate the need for approval by local departments of social services.

Registration could take a number of different forms. The highest level of protection for children would be provided by mandatory registration for all small day care homes. As an alternative, the State might also consider registering only homes caring for more than two children, as is currently done in North Carolina. Or, the State could establish some other lower limit for mandatory registration.

The number of children cared for in small day care homes of different sizes is shown in Table 13. These figures can be used to estimate the number of children who would remain in unregulated care if different lower limits for registration were chosen. For example, choosing three children (including children related to the provider) as the lower limit would mean that an estimated 9,700 or nine percent of the children in small day care homes would be in unregulated care, while 103,800 children would be in regulated care.

While it provides only limited protection for children, the State could also consider voluntary registration for small day care homes. The specific form adopted should recognize the principles for regulation and the impact of regulation on the quality, availability, and affordability of care in Virginia.

Why Registration and Not Licensure? It is estimated that there are about 33,000 small day care homes in this State. This estimate is based on the JLARC and VCU surveys of parents and providers. Licensure of these and other providers who request to be voluntarily regulated in order to receive public funds would cost the State more than $15 million annually, assuming a caseload of 100 homes per regulatory staff member.

Licensure of these providers would offer the greatest protection. However, given the estimated number of these types of providers, the informal nature of the

Table 13

Children Cared For in Small Day Care Homes

Description of Home	Estimated Children in Care	Percentage Total in Small Day Care	Cumulative Number of Children in Care	Cumulative Total in Small Day Care
Caring for One Child	2,200	2%	2,200	2%
Caring for Two Children	7,500	7%	9,700	9%
Caring for Three Children	24,600	22%	34,300	30%
Caring for Four Children	51,000	45%	85,300	75%
Caring for Five Children	28,200	25%	113,500	100%

Notes: Percentages may not add to 100 due to rounding.

Source: JLARC/VCU survey of parents and JLARC and VCU surveys of providers.

small day care home, and the limited number of children that are in care in these homes, licensure appears to be inappropriate. Registration, on the other hand, could still offer protection while not creating an excessive burden on parents and providers and excessive costs for the State.

Small day care homes, by definition, care for a limited number of children in a home atmosphere. According to the JLARC and VCU surveys of providers, providers who will be defined as small day care homes care for an average of 3.7 children with 1.3 of them being related to the provider.

Providers of this care also tend to be in the day care business on a short-term basis. The U.S. Department of Labor has reported a turnover rate in family day care of 60 percent per year. Thus, it would be a questionable use of resources to license small day care homes that might not be operating the next year.

Registration, even if mandatory, does offer less protection than licensure. No supervisory inspection occurs before the provider is registered and health and safety standards are not as far-reaching as they are for licensure. Registration also relies on the self-monitoring by providers and on monitoring by parents. However, many of the concerns that require licensure of group day care homes in general are

not found to the same degree in small day care homes. For example, unless all five children in care are under the age of two, only one provider is necessary to provide care to the children.

The registration system can still protect children by establishing standards, providing for inspections, granting the State the authority to investigate complaints, and identifying currently unknown providers to the State so that they can receive child day care training.

In some states, registration has been more successful than licensure as a regulatory form for family day care homes. For example, The National Day Care Home Study evaluated the use of registration by Texas as the regulatory form for small day care homes. The report states:

> Two underlying factors in the decision to adopt registration were the issue of cost and an attempt to bring more "underground" family day care operations under the regulatory umbrella....Registration has lowered the per-home cost of regulation by reducing the level of state screening and monitoring and by dramatically increasing the number of homes falling under the regulatory umbrella....The outcome of DHR's [Texas Department of Human Resources] recent evaluation of registration reassures DHR officials that registration is working better than licensing previously did....

Need for Registration. As discussed in Chapter III, other regulatory authorities have had to regulate small day care homes in Virginia in order for the children in these homes to be protected and for the providers to receive various types of reimbursements. These regulatory authorities would no longer need to be involved if the State mandatorily registered all small day care homes.

A mandatory registration system would eliminate the need for USDA alternate approval of family day care homes, thus opening up USDA Child Care Food Program (CCFP) funds for all day care providers in the State. Currently, these funds are not available to some providers because they are not regulated by the State, and the localities in which they live will not conduct the required inspections for USDA approval. USDA sponsor associations will continue to monitor the participating homes three times a year and conduct one training session per year concerning the CCFP. However, the providers will only be required to meet the State's registration requirements (or licensing requirements as applicable).

Registration would also eliminate the need for local approval of family day care homes which care for recipients of SSBG and other public funds. Registering providers would release local departments of social services from having to approve any child day care providers. Federal regulations only require that the providers be regulated, not a particular form of regulation.

As noted earlier, the Attorney General has stated in an informal opinion that localities have no authority to regulate family day care homes. A primary reason localities began registration on the local level, however, was that the State was not regulating these providers.

Registration can also be broadly and uniformly applied to the wide variety of people offering this type of child day care. Its design is such that it can be reasonably enforced without creating a burden for the provider or parents. By having one regulatory authority, providers will no longer be subject to several forms of regulation from several authorities at once. In-home providers and relatives providing care to children that receive public funds should also be able to voluntarily register. The cost of registering small day care homes and in-home providers receiving public funds is estimated to be approximately $575,000 annually. This assumes that 6,500 homes (about 20 percent of all homes) would be inspected each year, and uses the NAEYC recommended caseload standard of 500 inspected homes per licensing specialist.

Recommendation (20). The comprehensive proposal of the Secretary of Health and Human Resources for improvements to the State's regulatory system for child day care should consider the options described in this report for regulating small day care homes. If the primary goal of protecting children in child day care is accepted, then some form of mandatory registration would seem appropriate. A mandatory registration system, if adopted, should be made by written application and should include a criminal records check and a safety and health evaluation checklist. Registration should also be available on a voluntary basis to in-home providers and relatives providing care in a small day care home setting who wish to receive public funds.

Determining the Registration Period and Level of Monitoring. To be consistent with the State's licensing period, the registration period for providers should be two years. While the registration periods in other states vary, a two-year period should be adequate to ensure protection of children while keeping the required administrative workload for DSS to a reasonable level. The number of homes that should be monitored each year must also be determined and will affect the cost and ability of DSS to conduct monitoring visits. DSS should determine the number of small day care homes that will be inspected by staff each year. All complaints about care within registered homes should be investigated.

Other states use a variety of inspection methods. Fifty percent inspect by sample or never inspect. Others attempt to inspect all homes each year. Typically, as the number of registered homes increases, the percentage of homes inspected each year decreases. Several states have found that because of the number of small day care homes, continuous inspection of all of them is almost impossible. But, inspections as a result of complaints are always carried out.

The director of Georgia's Child Care Licensing Division noted that her office is inspecting approximately eight percent of their registered homes because of

complaints against the providers. Michigan, with 10,500 registered homes, attempts to inspect ten percent each year but found that they do not have the staff to conduct the visits. North Carolina has approximately 4,000 registered homes with three to five children each, and decides each year how many homes will be inspected based on staffing and other administrative concerns.

Until some form of registration system is implemented, the number of small day care homes in Virginia can only be estimated. As stated previously, JLARC staff estimate that there are approximately 33,000 small day care homes in the State. Determining the number that can be monitored each year will depend on how many of these providers actually register and DSS staffing levels.

Recommendation (21). The comprehensive proposal of the Secretary of Health and Human Resources for improvements to the State's regulatory system for child day care should consider establishing a registration period for small day care homes of two years if this regulatory form is adopted. In addition, the proposal should consider requirements that all complaints against registered small day care homes be investigated. Also, as a part of the proposal, DSS should determine what percentage of homes it can effectively monitor each year. Amendments to the *Code of Virginia* which define enforcement responsibilities and any fees associated with registration should be recommended also.

Approval by Family Day Care Systems

As previously discussed, family day care systems licensed by DSS may approve family day care homes. It appears that the services that these systems provide to both parents and providers are generally of high quality. During JLARC staff site visits, system-approved family day care homes on average appeared to have a smaller number of observed safety hazards than any other form of family day care, including State-licensed family day care homes.

The average charge for care at a system-approved family day care home was clearly higher than other types of family day care as shown previously in Table 11. However, it is an alternative to State regulation that appears to promote high quality child day care. As discussed in Chapter III, DSS regulatory staff believe these homes provide high quality care, an observation confirmed by JLARC staff field visits. In addition, family day care systems have historically monitored both group day care homes and small day care homes and will relieve part of the regulatory burden for these homes on DSS. This regulatory option should remain available to providers and parents.

In order for the licensing of family day care systems to meet the State's goal and principles in regulating child day care, the licensing standards should be revised accordingly. These revisions would also help to ensure that all family day care home providers are treated fairly and equally when meeting minimal standards.

Recommendation (22). The comprehensive proposal of the Secretary of Health and Human Resources for improvements to the State's regulatory system for child day care should consider continued licensure of family day care systems by the Commissioner of Social Services. In addition, the State Board of Social Services should consider revising the minimum standards for licensed family day care systems, making them consistent with those promulgated for licensure of group day care homes and the selected form of registration for small day care homes.

IMPACT OF PROPOSED CHANGES TO THE REGULATORY SYSTEM

The purpose of the proposed changes to the regulatory framework for child day care in Virginia is to provide a greater level of protection for all of the children in care and to equalize impact on providers. The proposed changes also recognize certain limitations on the ability or appropriateness of the State to regulate all forms of care. For example, care by relatives, in-home providers, or providers in cooperative arrangements cannot be regulated effectively. The proposed changes also recognize that the same form of regulation may not be appropriate for all types of care. Thus, some form of registration is recommended for small day care homes.

Under the current system, 80 percent of the children in child care arrangements are in unregulated care. With the changes outlined in this report, all child day care could be regulated in some form. For the first time, the majority of the children in child day care in the Commonwealth could be provided some level of protection by the State.

Implementation of all of the changes to the regulatory system proposed in this report would cost the State an estimated $6.9 million annually. Additional funding of more than $900,000 would be required for first-year, start-up costs. Implementing a voluntary system of registration for small day care homes would reduce this cost somewhat, as would implementation in phases over several years. The estimate is based on the National Association for the Education of Young Children caseload recommendations for regulatory staff: 50 licensed centers per licensing specialist, 100 licensed group day care homes per specialist, and 500 registered small day care homes per specialist. The funding would provide for regulation of approximately 45,000 providers, at a cost of about $155 per provider. In contrast, DSS has reported that the current regulatory system for child day care costs the State $1,815,431, or about $1,412 per State-licensed or "certified as licensed" provider.

VI. State Initiatives to Promote Child Day Care in Virginia

In addition to regulatory responsibilities, the State has a prominent role in promoting quality and improving availability of child day care. Virginia has undertaken a number of initiatives to promote quality and availability. New State funding of $13 million for day care for low-income families has been appropriated for the 1988-1990 biennium. In 1989, the General Assembly created the Virginia Council on Child Day Care and Early Childhood Programs, which will be responsible for coordinating day care and early childhood education programs emphasizing at-risk four-year old children. By 1995, the council is expected to oversee programs serving one-fifth of all disadvantaged four-year olds in Virginia at a cost that could exceed $30 million. In addition, an on-site child care center for State employees in the Capitol Square area is scheduled to open in September 1989.

While much has been done in Virginia, additional initiatives would promote availability, affordability, and quality of care. The initiatives would also address complaints from parents about finding quality care. Results of the JLARC and VCU surveys of parents, associations, providers, and other states were considered in identifying initiatives the State may want to pursue in improving care in Virginia.

INITIATIVES TO PROMOTE AVAILABILITY OF CARE

The State can take several initiatives to help improve the availability of child day care for Virginia families. These initiatives include allowing public schools to offer day care programs, helping parents locate day care, and providing incentives to providers who offer day care. These initiatives would address the specific concerns about availability of care raised by parents on the JLARC/VCU survey.

Parents Report Having Problems Finding Some Types of Care

There does not appear to be a general, statewide shortage of child day care services in Virginia. However, some parents do report having difficulty finding certain types of care. In fact, availability of care was the problem cited most often by parents contacted in the JLARC/VCU survey. Of 205 families with children currently in care, 40 percent reported having problems finding care. The specific responses of parents are shown in Table 14. The table shows that many parents cited more than a single problem.

Table 14

Types of Child Care Reported by Parents as Difficult to Find

Type of Care	Percentage of Parents Reporting Problems
Infant Care	32
Care for Sick Children	29
Care Before 6 a.m. or After 7 p.m.	25
Care on School Snow Days or Teacher Work Days	20
Toddler Care	19
Before- and After-School Care	19
Summer Care for School-Age Children	17
Preschool Care	17
Care for Children with Special Needs	9

N = 205

Source: JLARC/VCU survey of parents.

In rural areas, availability problems were noted by 46 percent of families, while 33 percent of urban-dwelling families noted problems. Problems with convenience of care were reported by 39 percent of families in rural areas, compared to 27 percent of families in urban areas.

The survey of parents also identified 37 families in which a member of the household reported being unable to work because of problems arranging child care for their children. Eighteen of these families said that care was not available. Estimates of the statewide incidence of problems with availability indicate that a family member in approximately 44,000 Virginia households may be unable to work because of problems related to obtaining child care.

Care for Infants and Toddlers. On the JLARC/VCU survey, parents currently using child care were asked whether they had difficulty finding any of nine

types of care ranging from infant care to care for children with special needs. Parents cited infant care as the type most difficult for them to locate. Toddler care was difficult for 26 percent of rural residents to find as compared to 11 percent of urban residents.

Responses from child care centers to the JLARC staff survey of providers also indicated that the lowest vacancy rate (the number of vacancies divided by the capacity) was for infant care (11.9 percent). Only 688 spaces for infants and 1,608 spaces for toddlers were available among the 226 centers that responded. This equated to an average of three spaces for infants and seven spaces for toddlers per center. These low capacities reflect the requirement of many centers that children be at least two and one-half years of age to attend. Thus, the majority of care for infants and toddlers is provided in family day care homes or by in-home providers. Considering that less than one percent of family day care homes are licensed and readily identifiable by parents as being regulated by the State, it is not surprising that infant and toddler care were noted by parents as difficult to find.

Care for Sick Children. Twenty-nine percent of the parents on the JLARC/VCU survey reported that care for sick children was difficult to find. Currently there is only one licensed center specifically designed to care for sick children in Virginia. Special physical plant features include a separate entrance and ventilation system for each room that will serve children suffering from different types of diseases. The center serves children suffering from chicken pox, influenza, or a non-communicable disease or injury. The center can care for as many as 30 children between the ages of 18 months and 12 years.

Care During Odd Hours. Twenty-five percent of parents using day care noted difficulty finding care before 6:00 a.m. or after 7:00 p.m. Notable differences were shown in the responses of rural and urban residents. Thirty percent of residents in rural areas reported problems compared to 20 percent of urban residents.

Care for School-Age Children. As the number of women in the workforce has increased, so has the need for supervision of school-age children before and after school. For parents who must work, the alternative to having no available, affordable care for school-age children is frequently self-care in the home.

Based on responses to the JLARC/VCU survey of parents, 20 percent of parents reported care on school snow days or teacher work days as difficult to find. Also, before- and after-school care was difficult for 19 percent to locate while summer care for school-age children was difficult for 17 percent.

Respondents reporting that a family member was unable to work because of problems arranging care were asked which types of day care they needed. Three of the four most frequently reported types of care were for school-age children. The need for before- and after-school care was reported by 51 percent of these households, followed by summer care for school-age children by 49 percent, and care on school snow days or teacher work days by 43 percent.

Care for Preschoolers. According to JLARC/VCU survey respondents, preschool care was difficult to find for 22 percent of rural families versus ten percent of urban families. Further, this was the only type of care noted as being more difficult for at least ten percent of families based on income differentiation. Twenty-four percent of families with incomes below $35,000 as compared to 13 percent with incomes above $35,000 reported difficulty finding preschool-age care. Similarly, 35 percent of parents in the survey who needed day care in order to work reported that finding preschool care was keeping them from obtaining employment.

Allowing Schools To Provide Before- and After-School Care

As previously noted, 19 percent of parents using day care stated that before- and after-school care was difficult to find. Of families reporting that a household member was unable to work because of day care problems, 51 percent said they needed before- and after-school care.

When asked about initiatives the State should take, 82 percent of parents, 67 percent of consumer associations, and 61 percent of provider associations supported allowing schools to provide before- and after-school care. Thirteen of the 15 states surveyed by JLARC staff allow schools to provide this care.

A number of school boards in Virginia have responded to the need for before- and after-school care for their students. School board-sponsored programs in Arlington and Falls Church date back to 1969 and 1975, respectively. For fiscal year 1989, Arlington enrolled 1,806 children, or 23 percent of its elementary school population, while Falls Church enrolled 169 children, or 30 percent of its kindergarten through fifth-grade students.

The provision of before- and after-school care by public schools has been limited by a 1978 Attorney General's ruling, however. This ruling noted that local school boards do not have the authority — either expressed or implied — to sponsor their own extended day care programs. Programs already operated by the Arlington and Falls Church school boards were allowed to continue, but other localities were prohibited from establishing school-sponsored extended day programs without legislative permission.

During the 1987, 1988, and 1989 General Assembly sessions, specific permission was granted to 12 additional school boards to sponsor their own extended day care programs. These localities include the counties of Franklin, Loudoun, Patrick, and Prince William and the cities of Bristol, Danville, Manassas, Manassas Park, Norfolk, Portsmouth, Richmond, and Virginia Beach. The school boards in these localities may choose to contract for the day care services with an agency which is licensed or certified by the Department of Social Services (DSS) in addition to sponsoring the programs directly.

In addition to direct sponsorship or contracting for day care services by a school board, there is a third alternative by which extended day care may be provided within a school. Section 22.1-131 of the *Code of Virginia* grants public school boards authority to permit school buildings to be used for purposes other than educational classes as long as it "will not impair the efficiency of the schools." Several localities have permitted other entities to contract for and operate child care centers on school property before and after school.

Allowing schools to provide extended day care has been recommended a number of times in the past. School buildings are used only during part of the day and are designed specifically for school-age children. Children do not need to be transported to the care facility, eliminating an inconvenience for the parents and the danger of accidents. Several bills have been introduced in the past few years that would have given universal authority for school boards to sponsor extended day programs. These bills have been resisted in part, however, on the basis of unfair competition with the private sector.

Given the increasing need for extended day care and the potential for harm presented by the alternative — self-care by children — the provision of safe, affordable care in the schools that the children attend should not be discouraged.

Recommendation (23). The General Assembly may wish to grant all school boards permission to sponsor day care programs that operate outside of school hours. If qualified providers are available, school boards should contract with entities licensed as day care providers and comply with Virginia Public Procurement Act provisions in seeking contracts for the care.

Helping Parents Locate Day Care

Parents may not know where to begin when looking for a child day care provider, especially if they are new to an area. Knowledgeable parents in Virginia might know that they can call a number of different sources to obtain information about available day care. They can call regional offices of DSS, U.S. Department of Agriculture (USDA) sponsor associations, employment agencies, local departments of social services, hospitals, information and referral centers, or resource and referral programs.

While a resource and referral program would be the most helpful to parents and offers services to providers as well — such programs do not operate statewide. Adding active child day care resource and referral programs to each of the State's existing information and referral centers would improve services to Virginia's parents and providers.

Resource and Referral. Resource and referral services can improve the availability of child day care because they are specifically designed to help parents

find child day care appropriate for their individual needs. Resource and referral programs are especially helpful to parents who prefer small day care homes, offering parents a central place to call for the names of these providers. Resource and referral programs also improve availability by recruiting providers to offer needed care. These programs are typically aggressive in marketing and providing services.

The Department for Children reports that ten resource and referral programs currently operate in Virginia. Sponsorship of these programs varies. Two are sponsored by public agencies and the remainder by a combination of public and private sponsors. Two of the ten programs, located in Roanoke and Hampton Roads, operate as units of the State's information and referral centers. These two programs receive State funding, while the other resource and referral programs do not.

Because resource and referral programs better serve parents and providers, a number of Virginia studies have called for increased resource and referral services. For instance, the 1988 Report of the Governor's Corporate Advisory Commission on Employers' Initiatives for Child Day Care recommended that the State provide technical and financial support for new and existing resource and referral services. The 1990-92 Comprehensive Prevention Plan for Virginia by the Virginia Council on Coordinating Prevention called for the establishment of statewide resource and referral services in each of Virginia's information and referral regions by 1994.

Statewide Delivery System for Resource and Referral Services. Resource and referral programs do not operate statewide. For example, four of the ten programs operate in Northern Virginia. One way to make resource and referral services available to all Virginia parents would be to make the service a component of the State's existing information and referral network. As noted, two of the resource and referral programs already operate as components of information and referral centers. In addition, the system already provides information about child day care now regulated by the State and local departments of social services.

Adding resource and referral programs to the four other information and referral centers would allow the network to be a source of information on all day care services, not just those regulated by DSS. It would also allow the network to help recruit child day care providers and give these providers a central source for information on training opportunities and other services. The major benefit would be that parents in all Virginia localities could receive resource and referral services, gaining access through the network's toll-free numbers.

In 1987, DSS estimated the two-year cost of adding a resource and referral program to all six information and referral centers as approximately $481,000. This included the cost of marketing the service to the public.

Recommendation (24). The General Assembly may wish to add resource and referral programs to the core services of the four information and referral centers

currently without this service. The Department of Social Services should determine the level of State funding required to add these services and recommend any required funding to the General Assembly.

Providing Incentives to Offer Day Care

The most important action the State can take to encourage providers to offer day care is to make the regulatory system equitable and fair. Regulation should not discourage qualified providers from entering the market. The previous chapter recommended a more flexible system that will promote rather than discourage the provision of child day care. Other provider needs were identified through the JLARC and VCU surveys of providers.

When providers were asked about problems they encountered which were not related to State regulation, but might discourage the provision of care, the two problems most often cited were the ability to attract and retain staff, and liability insurance (Table 15). Attracting and retaining qualified staff was reported by the largest percentage of directors of child care centers (45 percent) and other children's programs (26 percent). This is an industry-wide problem. Obtaining liability insurance was the problem noted by most regulated family day care providers (21 percent).

Attracting and Retaining Staff. According to a 1988 study by the Child Care Action Campaign, Wages and Salaries of Child Care Workers: The Economic and Social Realities, the median salary for child care workers in America is about one-half that of the national median salary. In addition, less than one-half of child care workers are provided other benefits such as health care. Another problem with attracting and retaining qualified staff is the perceived low status child care providers have in U.S. society, according to the Child Care Action Campaign.

The State has recently taken steps that should indirectly help the child day care industry attract and retain qualified staff in Virginia. The Joint Subcommittee Studying Early Childhood and Day Care Programs was charged to "recommend a mechanism for the phased integration of and funding for quality early childhood developmental programs which recognizes the factors that contribute to quality such as the availability of qualified early childhood teachers and caregivers."

Prior to the 1989 General Assembly, the joint subcommittee made recommendations, now being enacted, that will begin this process. These include the creation of the Virginia Council on Child Day Care and Early Childhood Programs, the request made of the Virginia Community College System and four-year institutions of higher learning to develop a plan for the education and training of day care personnel, and the establishment of a day of recognition for early childhood and day care providers and professionals. The joint subcommittee will also be looking at additional direct and indirect incentives for child day care providers prior to the 1990 Session.

Table 15

Operating Problems Noted by Providers
(Not Related to State Regulation)

Problem	Child Care Centers (N=226)	Children's Programs (N=331)	Regulated Day Care Homes (N=310)	Unregulated Day Care Homes (N=53)
Attracting and Retaining Qualified Staff	45%	26%	—*	—*
Obtaining Liability Insurance	14%	9%	21%	8%
Meeting Local Zoning Requirements	8%	3%	1%	2%
Meeting Other Local Ordinances	3%	1%	1%	0%
Obtaining Technical Assistance	1%	1%	1%	—*

*Data were not collected from this group of providers.

Source: JLARC staff surveys of providers.

In addition, this JLARC review makes recommendations that, if implemented, could indirectly affect the attraction and retention of qualified staff. These include the fair and equitable regulation of out-of-home child day care providers, and the promotion of parent education and provider training as inherent components of a regulatory system that can help to ensure quality child care through nonregulatory means.

Monitoring Liability Insurance for Day Care Providers. Problems in obtaining liability insurance were noted by directors of child care centers and other children's programs and by regulated and unregulated home providers (Table 15). Thirty-six percent of surveyed provider associations indicated that obtaining liability insurance was a current problem for their members.

Problems related to obtaining liability insurance for day care operations have received considerable attention from the State Corporation Commission (SCC) in recent years. A 1987 report noted problems with policy cancellations, non-

renewals, and excessive costs for day care providers. Surveys completed for the SCC report showed that 23 percent of child care centers and 22 percent of family day care homes had their insurance cancelled or non-renewed during a three-year period.

A report prepared by the SCC for the 1989 General Assembly session presented an improving climate for liability insurance, noting that 74 insurance companies were willing to accept new policies for day care providers. This was in contrast to a figure of only eight companies interested in writing new policies in the SCC's 1988 supplemental reports.

The 1989 annual report noted that 20 percent of licensed child care centers had experienced cancellation or non-renewal of their liability insurance in the last three years, however. Thirty-one percent also had difficulty obtaining insurance, with one-half of the respondents indicating the difficulty resulted from availability and the other half attributing it to affordability. Only 57 percent of licensed family day care providers reported having liability insurance, with 48 percent of them reporting difficulty because of availability or affordability.

Recommendation (25). The State Corporation Commission should continue to monitor the availability of liability insurance for child care centers and family day care homes. The Department of Social Services should have information available for day care centers and providers on how to obtain liability insurance coverage and the names of insurance companies that are willing to write new policies.

Initiatives to Promote Employer-Supported Care

Nationwide only 3,500 of the more than six million employers currently provide some family or child day care benefits to working parents. Recognizing that child day care benefits for employees can assist in recruitment and retention, however, a number of employers are now expanding the benefits provided. Employees' child day care needs can be supported through a variety of benefits, which may be provided either directly or indirectly. For instance, employers may opt to provide care on-site or near-site. As alternatives, they may indirectly support the day care needs of employees through educational programs for parents, or by loaning or donating money, materials, or resources to child day care programs in the community. Other benefits include operating an information and referral service in-house or contracting with a separate agency to provide day care information to employees, contracting with family day care systems to ensure that a network of homes is available to meet employees' needs, and contracting for short-term care of employees' sick children in day care facilities.

The size of the company is often a factor in determining the types of child care benefits offered. For example, benefits provided by small companies are generally related to flexible work policies, which allow employees to coordinate work and family responsibilities. These typically provide for staggered shifts or more

flexible work hours. Large companies may operate on-site or near-site child care centers; or two or more employers may share the costs of such a center.

Estimates of the number of on-site centers currently operating nationwide range from 700 to 900, with approximately two-thirds of these centers being operated by hospitals. However, this option has become increasingly popular among other industries and government agencies. JLARC staff visited two employer-supported child care centers in Roanoke. Both centers operated year-round, five days a week during the regular workday.

> *Halmode Apparel opened a center for its employees in August 1985. While the center accepts children from the public, priority is given to children of full-time Halmode employees. The center is licensed for 18 children between two and one-half and 12 years of age. Halmode subsidizes the cost of care for the children of its employees — paying approximately $2,000 a month.*

* * *

> *In August 1986, Dominion Bankshares Corporation opened a center for its employees. The prospect of having a child care center at the bank had been discussed and researched as early as 1981. In contrast to the Halmode center, Dominion's center provides care to children of employees only. Children are enrolled on a first come, first served basis. The center is fully enrolled, caring for 70 children between six weeks and five years of age. The center maintains an extensive waiting list which includes children yet to be born.*
>
> *Dominion Bankshares has been nationally recognized as having a model center. In addition to being licensed by the State, the center is accredited by the National Association for the Education of Young Children. To ensure quality, staffing levels and qualifications exceed those required by licensure. The company subsidizes the center at about $100,000 each year.*

Recognizing the success of such programs, the State has begun to examine ways in which it can encourage employer-supported programs. In 1988, the Governor's Corporate Advisory Commission on Employers' Initiatives for Child Day Care recommended that the State provide:

- matching grants for innovative new programs
- loan guarantees for small businesses that want to open child care centers

- sales and use tax exemptions for child care centers that satisfy national standards for high quality programs
- financial support for better training and wages for day care providers
- tax credits for the initial costs involved in establishing on-site day care centers.

These and other initiatives should be considered in order to promote employer-supported day care.

INITIATIVES TO PROMOTE AFFORDABILITY OF CARE

The State can assist parents by making care more affordable in two ways: direct assistance programs and income tax policy. These programs might be most useful if focused on providing assistance to Virginia's lower-income families. Both forms of State assistance would address the concerns about the affordability of care that were expressed by parents in the JLARC/VCU survey.

Parents Report That Some Care Is Not Affordable

Thirty-five percent of families with children in day care reported that care was not affordable. An even larger percentage of families with incomes below $35,000 reported problems with affordability of care. Forty-eight percent of these families reported problems with affordability, compared to 25 percent of families with incomes above $35,000.

Broad support was shown for the State helping to pay for day care. Eighty-three percent of parents, 83 percent of consumer associations, and 49 percent of provider associations favored this State initiative. DSS regulatory staff stated on the JLARC staff surveys that the State should expand the Child Day Care Voucher Pilot Program (61 percent of licensing specialists and all licensing administrators).

In addition, 83 percent of the parents responding to the survey stated that the State should increase the tax deduction for day care. Other surveyed groups, including regulatory staff and provider and consumer associations, also supported this initiative.

All 15 states surveyed by JLARC staff offer subsidies for low-income families, while five of those states also have a tax deduction or credit for child day care expenses. Virginia also has initiatives to help the poorest families with child day care costs through direct assistance. However, more could be done for low-income families not eligible for this public assistance. Converting the current tax deduction to a tax credit would be useful in helping these families.

Direct Assistance for Day Care for Low-Income Families

The federal government significantly reduced its funding for child day care for low-income families beginning in 1981. While federal funding for child day care is still available for families receiving Aid to Dependent Children, little federal funding for day care for other low-income working families is available. The State has stepped in to fill this gap, and began funding new programs to benefit these families in 1986. The two primary State-funded programs are the Child Day Care Fee System and the Child Day Care Voucher Pilot Program. (Both programs are financed through a single funding source.)

The Child Day Care Fee System was approved by the General Assembly in 1986 and funded at $1.5 million for each year of the biennium. During the 1988 session of the General Assembly, demand for this program led to appropriations of $6.5 million for each year of the 1988-1990 biennium. The fee system assists low-income working families who are not eligible for other assistance. The system operates on a sliding fee scale with the amount of assistance determined by the proportion of family income spent on day care.

The Child Day Care Voucher Pilot Program was initiated in five localities on January 1, 1989. The program serves the same population as the Child Day Care Fee System — low-income working families not eligible for other assistance. The major difference between the voucher program and the fee system is the way payments are made to the provider. The voucher program provides parents with vouchers for purchasing day care services at market rates rather than through purchase of service agreements at below-market rates. It is anticipated that more providers will participate if market rates are paid, and increased provider participation will broaden the options available to parents. The voucher program also gives parents greater choice in the selection of care.

It is important for direct assistance to be available for families with the lowest incomes. Even progressive tax policies are of little benefit to these families. Many have no tax liability and receive no benefit from a credit or deduction. Other low-income families who do owe taxes are often unable to wait for a one-time tax credit to help them pay for their day care. But for families not eligible for any public assistance, tax policy can provide some assistance.

State Income Tax Credits Could Assist Lower-Income Virginians

The State can assist parents in paying for day care through an income tax credit that allows for "refunds" of child day care costs. Currently the State provides a dependent care tax deduction, which allows parents to deduct some of their day care expenses. By converting from a tax deduction which primarily benefits higher-income families to a tax credit, the State could provide greater assistance to lower-income families. This has been recommended previously in the Report of the Governor's

Corporate Advisory Commission on Employers' Initiatives for Child Day Care and is being considered by the Joint Subcommittee Studying Early Childhood and Day Care Programs.

Current Tax Policy. In Virginia, parents are allowed to deduct part of their child day care costs from the State taxes they owe through the dependent care tax deduction. This deduction is one way the State helps improve the affordability of child day care. This assistance, however, provides greater relief for taxpayers in the higher-income brackets because of its structure.

Virginia tax law allows a deduction for dependent care costs of up to $2,400 for one dependent or $4,800 for two or more dependents. Dependents included under this tax provision are children under the age of 15 and adults who are mentally or physically not able to provide self-care. This definition of qualifying individuals and the amount of the deduction are based on the federal tax code. The federal tax code, however, allows for a credit rather than a deduction for dependent care costs.

Both tax credits and tax deductions lower the amount owed by the taxpayer. A tax deduction is subtracted prior to computing the amount of tax owed. Thus, a deduction lowers the base on which a tax is computed, and the tax bill is reduced by the amount of tax that would have been owed on that marginal income. A tax credit is subtracted after the amount of tax owed has been calculated and therefore directly reduces the amount owed.

Generally a tax deduction or credit is useful only to taxpayers whose income is high enough that taxes are owed. The one exception to this is a tax credit that is refundable. A refundable credit refunds the amount of the qualifying credit, even if this amount exceeds the amount owed in taxes. If the credit is not refundable, a lower-income taxpayer who owes no taxes receives no benefits.

Tax deductions provide greater relief for higher-income taxpayers. A taxpayer earning $7,000 who claims the child care deduction will, on average, have his tax bill reduced by $36. A taxpayer earning $75,000 dollars who claims the child care deduction will have his tax bill reduced by $128 on average. This is due in part to the tendency of higher-income taxpayers to claim higher child care costs. It is due also to the fact that the deduction for the taxpayer earning $7,000 dollars amounts to three percent of qualifying costs, while the deduction for the taxpayer earning $75,000 amounts to 5.75 percent of qualifying costs. Thus, for every dollar spent on child care costs, the higher-income taxpayer will receive 2.75 cents more per dollar than the lower-income taxpayer.

Tax Options for Consideration. The State has many options available for improving the affordability of child day care through its tax framework. The options explored by JLARC staff would move the State from a tax deduction that generally favors higher-income families to a tax credit policy that would be more beneficial for lower-income families. This would be consistent with actions the State has taken in

recent years to compensate for federal reductions in funding child day care for low-income families.

The composition of federal funding for child day care has changed significantly in the last 12 years. According to a Child Care Action Campaign publication, "Federal Financing of Child Care: Alternative Approaches and Economic Implications," direct funding of child day care for low-income families through Title XX of the Social Security Act comprised 40 percent of the federal government's total child day care spending in 1977. Compensation for day care expenses through the Dependent Care Tax Credit made up 25 percent of federal funding at that time. By 1986, however, funding through Title XX (the Social Services Block Grant) comprised approximately seven percent of federal funding on child day care while the Dependent Care Tax Credit accounted for more than 60 percent of such funding. Thus, the majority of federal support for child day care now benefits middle- and upper-income families.

The State may wish, therefore, to design its tax framework to primarily benefit lower-income families. The options examined by JLARC staff involved moving from a tax deduction to a tax credit and focusing the benefits of the credit to the lower-income families. Options are presented in Table 16 for illustrative purposes.

Table 16 shows one method in which the credit is based on the credit rate schedule used by the federal government. The rate ranges from 30 percent of qualifying costs for incomes below $10,000 to 20 percent of qualifying costs for incomes above $28,000. This method was developed by the Department of Taxation and is included in the table for the purpose of comparison to the options developed by JLARC staff. As shown, the cost of a credit based on federal rates would be quite high, an estimated $78.9 million.

Options 1 and 2 were designed to cost approximately the same as the current tax deduction. These options also establish a maximum income above which a tax credit should not be claimed. Two maximum income levels were examined: $35,000, which is the approximate median income in Virginia (Option 1), and $50,000 which is approximately 150 percent of the median income in Virginia (Option 2).

Option 1 illustrates using a credit rate of 21 percent for families with adjusted gross incomes of less than $5,000 and gradually decreasing the credit rate by three percent for every $5,000 increment. As shown, the value of the credit would be higher than the current value of the deduction for each income level up to the $30,000 to $34,999 bracket.

The highest credit rate under Option 2 is 15 percent, which decreases by 2.5 percent for every $5,000 increment. Again, the value of the credit exceeds the current value of the deduction until the adjusted gross income reaches the $35,000 to $39,999 bracket.

These options present just a few alternatives of many available in restructuring the tax system. The option that is chosen should be based on the goals

Table 16

Options for Converting Virginia's Tax Deduction to a Tax Credit

Virginia Adjusted Gross Income	Average Expenses Claimed	Current Deduction: Marginal Deduction Rate	Current Deduction: Average Value of Deduction	Federal Credit Schedule: Credit Rate	Federal Credit Schedule: Average Value of Credit	Option 1: Credit Rate	Option 1: Average Value of Credit	Option 2: Credit Rate	Option 2: Average Value of Credit
$ 0 - $ 4,999	118.72	2.00%	$ 2.37	30.00%	$ 35.62	21.00%	$ 24.93	15.00%	$ 17.81
5,000 - 9,999	1,043.33	*3.83%	40.04	30.00%	313.60	18.00%	188.16	13.50%	141.12
10,000 - 14,999	1,563.20	5.00%	78.16	28.00%	437.70	15.00%	234.48	12.00%	187.58
15,000 - 19,999	1,621.05	5.00%	81.05	** 26.00%	421.47	12.00%	194.53	10.50%	170.21
20,000 - 24,999	1,611.95	5.75%	92.69	** 23.00%	370.75	9.00%	145.08	9.00%	145.08
25,000 - 29,999	1,616.34	5.75%	92.94	** 21.00%	339.43	6.00%	96.98	7.50%	121.23
30,000 - 34,999	1,643.66	5.75%	94.51	20.00%	328.73	3.00%	49.31	6.00%	98.62
35,000 - 39,999	1,711.01	5.75%	98.38	20.00%	342.20	0.00%	0.00	4.50%	77.00
40,000 - 44,999	1,775.48	5.75%	102.09	20.00%	355.10	0.00%	0.00	3.00%	53.26
45,000 - 49,999	1,826.91	5.75%	105.05	20.00%	365.38	0.00%	0.00	1.50%	27.40
50,000 - 74,999	1,995.92	5.75%	114.77	20.00%	399.18	0.00%	0.00	0.00%	0.00
75,000 - 99,999	2,230.17	5.75%	128.23	20.00%	446.03	0.00%	0.00	0.00%	0.00
100,000 & Over	2,376.15	5.75%	136.63	20.00%	475.23	0.00%	0.00	0.00%	0.00
Estimated Revenue Loss		$19.3 million		$78.9 million		$19.1 million		$20.6 million	

* Approximately 42 percent of the incomes in this class were taxed at a five percent rate, while 58 percent were taxed at a three percent rate. The weighted average based on this distribution was 3.83%.

** Three credit rates applied across each of these brackets. For purposes of illustration, the rate associated with the midpoint of each bracket was assigned.

Source: JLARC staff analysis of Department of Taxation data.

determined by the General Assembly and the cost the General Assembly wishes to incur.

INITIATIVES TO PROMOTE QUALITY OF CARE

The State can implement several initiatives to improve the quality of care available — by offering and improving the training available to child day care providers and by expanding and improving parent education efforts in the State.

Parents, as decision makers, can be an important ally in upgrading the quality of day care. However, Virginia does little to educate parents about their role in monitoring the quality of their children's care.

Training Child Care Providers

Provider training can improve the quality of child day care, by helping ensure the safety of children in care. The State's current training efforts for child day care workers in the field are primarily directed at workers in State-licensed child care centers. Training opportunities, especially for currently unregulated family day care providers, could be greatly expanded.

Need for Provider Training. The skills and experience of child day care workers have long been presumed to affect the quality of child day care. However, conclusions from research on the effects of caregiver experience, education, and training on children's development have been mixed. The National Day Care Study in 1979 concluded that one of the most important ingredients of quality was the on-going training of providers in child care-related topics. Yet, in 1987, the NAEYC research monograph, Quality in Child Care: What Does Research Tell Us?, stated that results of the recent studies included in the monograph are not clear. The report notes that the conclusions on the effect of caregiver experience in these studies are inconsistent and that the effect of caregivers' education and training on child development show "some glimmer of consistency...but not as strong as one might hope or expect."

Even if training is not key to improving a provider's understanding of child development, it may be important in ensuring the children's safety. A study in Pediatrics, the journal of the American Academy of Pediatrics, concluded that training and education were most helpful in preventing injuries among children in child care centers.

Training Efforts By State Agencies. Three State agencies offer providers on-going training and training materials in addition to educational opportunities offered through the Virginia Community College System and State colleges and universities. The Department of Social Services, the Department of Health (DOH),

and the Virginia Cooperative Extension Service (VCES) offer training for providers already in the field. A summary of these training efforts appears as Table 17.

Training workshops and materials developed by DSS are limited to State-regulated providers. Only State-licensed or certified as licensed providers receive DSS training notices, since they pay licensing fees earmarked for training efforts. State-regulated providers also receive a quarterly newsletter from DSS, and catalogs for three media resource centers. These media resource centers are located in community colleges in the Richmond, Northern Virginia, and Roanoke areas. The centers offer books, pamphlets, videocassettes, kits, audiocassettes, phonograph records, and films for loan. Items from the centers can be requested by mail.

The Virginia Cooperative Extension Service training for child day care workers, shown in Table 17, was directed primarily to family day care home providers. Of these courses, 14 were directly related to child day care and an additional 11 concerned child development. The VCES also publishes a quarterly newsletter for child day care workers. In a two-year period, 84,000 copies of the newsletter were distributed through the extension service mailing list.

The Department of Health also provides training courses. Of the State's 36 health districts, 20 reported sponsoring workshops or classes for child day care providers as summarized in Table 17. The majority of Department of Health classes were directed to State-licensed center directors and staff and dealt with health and safety. In addition, the Department of Health does provide a grant for a newsletter on child safety, of which 23,000 copies have been distributed — one-third to child day care providers.

Table 17

Provider Training Courses Offered by State Agencies 1987 and 1988

Agency	Number of Courses	Number of Participants	Average Hours Per Course
Department of Social Services	153	5,140	5.1
Virginia Cooperative Extension Service	42	1,599	2.6
Department of Health	33	1,528	3.0

Source: JLARC staff analysis of DSS, VCES, and DOH data.

Training Needs. The JLARC and VCU surveys of providers indicated that family day care providers do receive some training but would like more. Table 18 shows provider interest in various training topics. Fifty-three percent of unregulated providers surveyed stated that they would be interested in receiving first aid and cardiopulmonary resuscitation (CPR) training. Forty-six percent of child care centers respondents also expressed interest in this training. In addition, 64 percent of these center respondents stated that additional training in developmental curricula should be emphasized in State-provided training, and 57 percent said parental communication and education should be emphasized. Similarly, 57 percent of provider associations and 67 percent of consumer associations in the JLARC surveys of associations stated that the State should increase training opportunities for day care providers.

According to information gathered on the JLARC staff surveys of licensing specialists and licensing administrators, 81 percent of the licensing specialists and all licensing administrators stated that the State should increase training opportunities for day care providers. Regulatory staff said more training is needed in such topics as administration, child development, and parental communication and education.

Given provider and consumer support for provider training, and its impact on the safety of care, the State should consider expanding current training opportunities. For registered small day care homes, the State could improve provider training opportunities without increasing the cost or lessening availability of day care by providing voluntary training as one of its services. A small registration fee, similar to licensing fees paid by currently licensed family day care homes, would help DSS provide training opportunities. Such training opportunities could also be an incentive for family day care providers to register. Registered homes should receive notices about DSS training.

Recommendation (26). The Department of Social Services should provide registered small day care home providers with voluntary training opportunities through newsletters, media resource center catalogs, and invitations to workshops and classes. The department should develop a voluntary training credential for registered small day care home providers and licensed group day care home providers.

Providing Information About Choosing Quality Day Care

Parents can improve the quality of child day care by evaluating and selecting quality day care arrangements for their children. They can also serve as informal regulators of care, by discussing with providers their concerns about undesirable practices and by reporting problems to regulatory authorities.

Despite the obvious importance of parents in promoting quality care, the State currently provides little information or education to parents on selecting and evaluating quality care. With information about what to expect from high quality day care, parents can make better informed decisions and can act as regulatory partners in the care provided to their children.

Table 18

Provider Interest in Training Topics

Topic	Family Day Care Homes Unregulated (N=53)	Family Day Care Homes Regulated (N=310)	Child Care Centers (N=226)
Administration	36%	25%	39%
Child Development	38%	62%	62%
Developmental Curriculum	40%	33%	64%
First Aid and CPR	53%	64%	46%
Nutrition	36%	48%	32%
Parental Communication and Education	36%	54%	57%

Source: JLARC and VCU surveys of providers.

Parent Education. Broad support was shown for parent education efforts. Of the 552 parents responding to the JLARC/VCU survey, 93 percent said the State should provide parents with information about choosing quality day care. Fifty percent of consumer associations and 65 percent of provider associations supported educating parents about quality care. Eighty-one percent of DSS licensing specialists and all licensing administrators also favored the State taking action to provide parents with more information about selecting quality care.

Parents as Decision-Makers and Regulatory Partners. Helping parents become more informed about the decisions they make can improve the quality of care. Studies, such as the "The Importance of Educating Parents to be Discriminating Day Care Consumers" in Advances in Early Education and Day Care, have shown that parents often make day care choices based on the cost and convenience of the arrangement, with the quality of care being a lesser consideration. Choices based on cost and convenience are easier to make than deciding what makes a day care arrangement a quality arrangement. Parents may not know exactly what to look for or what questions to ask to identify quality. Thus, when parents visit day care providers as part of their selection process, they are more likely to look at physical surroundings and conditions than at other indicators of quality.

Parents are more frequent visitors to care than any regulatory authority. By alerting parents to the risks of unregulated care and by encouraging their

monitoring input, the State could have a valuable ally in reporting illegal operations or unsafe care. Parents must also be informed that even regulated care is not without its risks. They need to be educated about what regulation includes and what it does not. In addition, parents can be informed of who to call if they have a complaint.

Current Parent Education Efforts. There are few parent education efforts underway in Virginia; and the majority of these are focused on improving parenting skills, not on helping parents choose quality day care or informing them about day care regulation. There is no current means for educating parents about the risks involved in regulated and unregulated child day care. An interested parent would have to diligently seek out such information.

The State does have one brochure — titled the "ABC's of Quality" — specifically related to choosing quality day care arrangements. This brochure is sent out when parents call DSS regional offices and some local departments of social services. In some regions, the brochures are supplemented by materials developed by local governments or national organizations. In a two-year period beginning in April of 1987, DSS reported that 21,925 of these brochures had been distributed.

Some provider associations, family day care systems, and resource and referral agencies also distribute information to help parents choose quality day care. A few of these efforts do provide information on child day care regulation.

Despite the lack of parent education efforts undertaken by the State, parents have been given more responsibility for their day care arrangements. For instance, parents are allowed to visit the regulated center or family day care home they use for their children at any time. In addition, a 1988 change in the Code allows parents to call DSS for information about a provider's licensing history, including the number of complaints that have been made about the provider. DSS has also recognized the need for parent education, recently establishing a position in the central office to help develop consumer education efforts.

Other states are also enlisting the aid of parents to regulate child day care. Eight of the 15 states included in the JLARC staff survey had undertaken parent education efforts. Many states routinely provide simple pamphlets for parents about what care is regulated and what types of care are not. These states educate parents about what they should do if they suspect a provider may be operating illegally. For example, Wisconsin distributes a card to parents titled "Your day care — Is it legal?" California has developed a series of simple handouts on choosing child care that are distributed through their information and referral network. One of the handouts from the California series is entitled "Child Care Complaints: How to Avoid Them and What To Do About the Ones You Can't...." The Commonwealth should begin similar efforts.

Recommendation (27). The Department of Social Services should develop a pamphlet for parents about the regulation of child day care. The pamphlet

should include telephone numbers for parents to call with complaints about regulated care. This pamphlet should be distributed to parents through a variety of locations such as obstetrician and pediatrician offices, elementary schools, maternity wards, and local health departments.

Recommendation (28). The resource and referral components of the information and referral system should be used to promote parent education on choosing quality day care.

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Appendix A

JLARC STUDY MANDATE

SENATE JOINT RESOLUTION NO. 41

Requesting the Joint Legislative Audit and Review Commission to study the regulation of child day care and how subjection to child day care regulation should be determined in the Commonwealth.

Agreed to by the Senate, February 10, 1988
Agreed to by the House of Delegates, March 9, 1988

WHEREAS, the physical, mental, emotional, and social development of children will affect the future of any society; and

WHEREAS, child care providers have enabled employers to recruit and retain a stable work force; and

WHEREAS, women have become a necessary and vital portion of Virginia's healthy economy; and

WHEREAS, there are 906 child care centers, 274 family day care homes and four family day care systems licensed by the Department of Social Services for approximately 75,678 child care spaces; and

WHEREAS, there are 149 religiously exempt programs for 9,889 children and at least 11 exempt hospital-sponsored programs for approximately 1,025 children; and

WHEREAS, there are seven exemptions and exceptions under the definition of child care center and three exceptions under the definition of family day care home; and

WHEREAS, there is an undetermined number of children receiving care in homes not subject to licensure; and

WHEREAS, many providers receive no supervision or training, since the majority of family day care homes are unregulated and many exemptions and exceptions exist for child care centers; and

WHEREAS, it is difficult for parents to locate and evaluate unregulated care; and

WHEREAS, regulation assists parents who might not have the expertise to determine safe and quality care; and

WHEREAS, elimination of exceptions and exemptions will result in increased state government costs due to regulating additional facilities; and

WHEREAS, the National Associaton for the Education of Young Children opposes exemptions and exceptions to regulation of child care programs on the basis of sponsorship, length of the program day, or on the ages or number of children served; and

WHEREAS, one of the recommendations of the Governor's Child Care Conference in June of 1987 was to eliminate all exemptions and exceptions to licensure for child care centers; and

WHEREAS, unlicensed facilities can provide care that is less expensive and compete unfairly with licensed providers; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Joint Legislative Audit and Review Commission will study the regulation of child day care and how subjection to child day care regulation should be determined in the Commonwealth.

The study shall (i) survey consumers and providers of child day care and associations concerned with child day care about subjectivity to child day care licensure; (ii) review Code §§ 63.1-195, 63.1-196 and 63.1-196.3 with respect to exemptions and exceptions, (iii) make recommendations regarding appropriateness of exemptions and exceptions, taking into consideration the number and ages of children, the amount of hours the children are in care, and the protection needed to ensure the health and safety for children in care, (iv) examine the definition of and regulation of family day care with respect to the number of children allowed, make recommendations regarding this definition and whether there should be separate standards for family day care homes and group family day care homes, whether homes should be licensed or registered, and, if a registration model is proposed, whether it should be mandatory or voluntary, (v) determine the amount of funding necessary to implement regulation in an effective and consistent manner if there is a reduction in exemptions and exceptions; (vi) recommend ways to improve the availability of child care and promote quality child care; (vii) examine training of care providers; and (viii) design a system which would equalize impact on all types of child care, public, private or proprietary.

All agencies of the Commonwealth shall provide assistance upon request to the study as appropriate.

The Joint Legislative Audit and Review Commission shall complete its work in time to submit its findings and recommendations to the Governor and to the 1990 Session of the General Assembly, providing interim reports to the 1989 Session of the General Assembly and at other times as appropriate as provided in the procedures of the Division of Legislative Automated Systems for processing legislative documents.

RESOLVED FINALLY, That the Clerk of the Senate prepare a copy of this resolution for presentation to Philip A. Leone, Director.

GENERAL ASSEMBLY OF VIRGINIA -- 1988 SESSION

HOUSE JOINT RESOLUTION NO. 116

Requesting the Joint Legislative Audit and Review Commission to study the regulation of child day care and how subjection to child day care regulation should be determined in the Commonwealth.

Agreed to by the House of Delegates, February 16, 1988
Agreed to by the Senate, March 2, 1988

WHEREAS, the physical, mental, emotional, and social development of children will affect the future of any society; and

WHEREAS, child care providers have enabled employers to recruit and retain a stable work force; and

WHEREAS, women have become a necessary and vital portion of Virginia's healthy economy; and

WHEREAS, there are 906 child care centers, 274 family day care homes and four family day care systems licensed by the Department of Social Services for approximately 75,678 child care spaces; and

WHEREAS, there are 149 religiously exempt programs for 9,889 children and at least eleven exempt hospital-sponsored programs for approximately 1,025 children; and

WHEREAS, there are seven exemptions and exceptions under the definition of child care center and three exceptions under the definition of family day care home; and

WHEREAS, there is an undetermined number of children receiving care in homes not subject to licensure; and

WHEREAS, many providers receive no supervision or training, since the majority of family day care homes are unregulated and many exemptions and exceptions exist for child care centers; and

WHEREAS, it is difficult for parents to locate and evaluate unregulated care; and

WHEREAS, regulation assists parents who might not have the expertise to determine safe and quality care; and

WHEREAS, elimination of exceptions and exemptions will result in increased state government costs due to regulating additional facilities; and

WHEREAS, the National Association for the Education of Young Children opposes exemptions and exceptions to regulation of child care programs on the basis of sponsorship, length of the program day, or on the ages or number of children served; and

WHEREAS, one of the recommendations of the Governor's Child Care Conference in June of 1987 was to eliminate all exemptions and exceptions to licensure for child care centers; and

WHEREAS, unlicensed facilities can provide care that is less expensive and compete unfairly with licensed providers; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Joint Legislative Audit and Review Commission study the regulation of child day care and how subjection to child day care regulation should be determined in the Commonwealth.

The study shall (i) survey consumers and providers of child day care and associations concerned with child day care about subjectivity to child day care licensure, (ii) review Code §§ 63.1-195, 63.1-196 and 63.1-196.3 with respect to exemptions and exceptions, (iii) make recommendations regarding appropriateness of exemptions and exceptions, taking into consideration the number and ages of children, the amount of hours the children are in care, and the protection needed to ensure the health and safety for children in care, (iv) examine the definition of and regulation of family day care with respect to the number of children allowed, make recommendations regarding this definition and whether there should be separate standards for family day care homes and group family day care homes, whether homes should be licensed or registered, and, if a registration model is proposed, whether it should be mandatory or voluntary, (v) determine the amount of funding necessary to implement regulation in an effective and consistent manner if there is a reduction in exemptions and exceptions; (vi) recommend ways to improve the availability of child care and promote quality child care; (vii) examine training of care providers; and (viii) design a system which would equalize impact on all types of child care, public, private or proprietary.

All agencies of the Commonwealth shall provide assistance upon request to the study as appropriate.

The Joint Legislative Audit and Review Commission shall complete its work in time to submit its findings and recommendations to the Governor and to the 1990 Session of the General Assembly, providing interim reports to the 1989 Session of the General Assembly and at other times as appropriate using the procedures of the Division of Legislative Automated Systems for processing legislative documents.

RESOLVED FURTHER, That the Clerk of the House of Delegates prepare a copy o this resolution for presentation to Philip A. Leone, Director.

Appendix B

SUMMARY OF RESPONSES TO THE JLARC/VCU SURVEY OF PARENTS

(November and December, 1988)

Hello, my name is _____ and I am calling for the Virginia State government to evaluate the quality of child day care in Virginia. We are conducting a short survey regarding child care issues. For this study we are speaking with parents who have children under 13 years old.

A. Are there children under the age of 13 living in your household?:

If yes, May I speak with the person most familiar with the daily care of your children? (If person changes, repeat entry paragraph.)

If no, Thank you very much for your time. (End interview.)

If don't know, Thank you very much for your time. (End interview.)

B. In what county, city, or town do you live? (specify)

1. I'd like to start out by asking some questions about the State's involvement in day care. In general, do you think the State should regulate child day care? (Mark one only.)

418 Yes
75 No
59 Don't Know

2. If the State regulates day care, please tell me whether you think the State should do any of the following. (Read the following list and mark response to each item.)

2a. Criminal record checks on caregivers

525 Yes
20 No
7 Don't Know

2b. Fire safety inspections of the building where care is provided

546 Yes
5 No
1 Don't Know

2c. Health inspections of the building

545 Yes
5 No
2 Don't Know

2d. Inspections to ensure that enough adults are present to care for the children

539 Yes
11 No
2 Don't Know

2e. Insure minimum amount of space for each child

511 Yes
28 No
13 Don't Know

2f. Require training for child day care providers

453 Yes
77 No
22 Don't Know

3. Should the State do any of the following to improve day care? (Read the following list and mark response to each.)

3a. Train child care providers

401 Yes
126 No
25 Don't Know

3b. Help parents in locating day care

427 Yes
111 No
14 Don't Know

3c. Provide parents with information about choosing quality day care

514 Yes
32 No
6 Don't Know

3d. Allow schools to provide before and after school care

453 Yes
77 No
22 Don't Know

3e. Increase the amount parents can deduct on taxes for day care

458 Yes
61 No
33 Don't Know

3f. Help pay for day care for low income families

458 Yes
71 No
23 Don't Know

3g. Provide incentives for employers to offer day care

482 Yes
55 No
15 Don't Know

4. Is there anything else you think the State should do to improve day care?

74 Yes (specify)
469 No
9 Don't Know

5a. Are any of your children who are under age 13 cared for by someone other than a parent or guardian at least once a week? This could include any type of care – from a full-time child care center to a child who cares for himself after school. We don't, however, mean the babysitter you occasionally hire when you go out socially.

205 Yes (Go to question 7.)

347 No

5b. Is anyone in your household currently unable to work because they have problems getting someone to care for your children?

37 Yes (Go to question 5c.)

310 No (Go to question 15.)

5c. Which of the following problems do you have? (Read the following list and mark all that apply.)

5c1. Care is not conveniently located

16 Yes
18 No
3 Don't Know

5c2. Care is not affordable

25 Yes
10 No
2 Don't Know

5c3. Quality of care is not as good as I would want it to be

21 Yes
9 No
7 Don't Know

5c4. Care is not available

18 Yes
16 No
3 Don't Know

5c5. Are there any other problems?

7 Yes (please specify)
28 No
2 Don't Know

6. What type of care would you need? Would you need.... (Read the following list and mark all that apply.)

6a. Infant care

15 Yes
22 No

6b. Toddler care

18 Yes
19 No

6c. Preschool care

13 Yes
24 No

6d. Before- and after-school care

19 Yes
18 No

6e. Care on school snow days or teacher work days

16 Yes
20 No
1 Don't Know

6f. Summer care for school-age children

18 Yes
18 No
1 Don't Know

6g. Care for sick children

11 Yes
25 No
1 Don't Know

6h. Care for children with special needs such as handicaps, emotional problems, or chronic illness

4 Yes
32 No
1 Don't Know

6i. Care before 6 a.m. or after 7 p.m. Monday through Friday

11 Yes
25 No
1 Don't Know

6j. Would you need any other types of care?

36 Yes (specify)
1 Don't Know (Go to question 15.)

7. Have you had any of the following problems when looking for care in your area? (Read the following list and mark all that apply.)

7a. Care was not conveniently located

69 Yes
135 No
1 Don't Know

7b. Care was not affordable

72 Yes
126 No
7 Don't Know

7c. Quality of care is not as good as I would want it to be

74 Yes
120 No
11 Don't Know

7d. Care was not available

82 Yes
120 No
3 Don't Know

7e. Have you had any other problems when looking for care in your area?

10 Yes (specify)
193 No
2 Don't Know

8. In general, how satisfied are you with the quality of the care your children receive? Would you say that you are very satisfied, satisfied, dissatisfied, or very dissatisfied?

132 Very satisfied
64 Satisfied
5 Dissatisfied
0 Very dissatisfied
1 Satisfied with some/dissatisfied with others
3 Don't Know

9. Next, I am going to ask you about specific care arrangements for your children who are not in school. How many of your children are 5 years old or younger and not in school?

74 None (Go to question 11.)
104 One
27 Two

10. Care can be provided in different types of places. It is possible that one child is usually cared for in more than one of these locations sometime during the week. I am now going to read you locations where care is provided. Please indicate all locations of care for all of your preschoolers. Remember, we're talking about care which is not provided by a parent or guardian. (Read the following questions and mark all that apply.)

10a1. Are any of your preschool-age children cared for in a nursery school or child care center?

52 If yes, 10a2. How many of your children?
46 One
6 Two

10a3. Is this a church-sponsored center?
24 Yes
27 No
1 Don't Know

79 No

10b1. Are any of your preschoolers cared for in your own home by someone other than a parent or a guardian?

23 If yes, 10b2. How many of your children?
18 One
5 Two

10b3. Please tell me who provides this care. Is it.... (Read list and mark all that apply.)

10b3(a). The child's brother or sister

2 Yes

10b3(b). Is the brother or sister under 13?
2 No

21 No

10b4. A relative
9 Yes
14 No

10b5. A nonrelative
14 Yes
9 No

10b6. The child cares for him/herself
23 No

108 No

10c1. Are any of your preschool-age children cared for in another private home?

75 If yes, 10c2. How many of your children?
- 64 One
- 10 Two
- 1 Inconsistent Answer

Please tell me who provides this care. Is it....
(Read list and mark all that apply.)

10c3. A relative
- 21 Yes
- 53 No
- 1 Inconsistent Answer

10c4. A nonrelative
- 56 Yes
- 18 No
- 1 Inconsistent Answer

56 No

10d1. Are any of your preschoolers cared for in some other location?

8 If yes, 10d2. How many of your children?
- 7 One
- 1 Inconsistent Answer

10d3. Please specify the location.

123 No

11. Next, I would like to ask about specific day care arrangements for your children who are in school. How many children are in school and between the ages of 5 and 12?

- 81 None (Go to question 13.)
- 80 One
- 41 Two
- 2 Three
- 1 Four

12a. (If respondent did not have preschoolers, read the following-otherwise, go to question 12(a).) Care can be provided before or after school in different types of places. It is possible that one child is usually cared for in more than one of these locations sometime during the week. I am now going to read you locations where day care is provided before or after school. Please indicate all locations of care for all of your school-aged children. Remember, we're talking about care which is not provided by a parent or guardian but which could include the child caring for himself. (Read the following questions and mark all that apply.)

12a1. Do any of these children go to a child care center before or after school?

30 If yes, 12a2. How many of your children?
- 23 One
- 7 Two
- 0 Three
- 0 Four

12a3. Is this a church-sponsored center?
- 9 Yes
- 21 No

93 No
1 Don't Know

12b1. Are any of your school-aged children cared for in your own home before or after school by someone other than a parent or guardian?

27 If yes, 12b2. How many of your children?
- 19 One
- 7 Two
- 1 Three
- 0 Four

Please tell me who provides this care. Is it....
(Read list and mark all that apply.)

12b3(a). The child's brother or sister

6 Yes

12b3(b). Is the brother or sister under 13?
- 1 Yes
- 5 No

21 No

12b4. A relative
- 17 Yes
- 9 No
- 1 Inconsistent Answer

12b5. A nonrelative
- 13 Yes
- 13 No
- 1 Don't Know

12b6. The child cares for him/herself
- 4 Yes
- 23 No

96 No
1 Don't Know

12c1. Are any of your school-age children in a before- or after-school day care program in a public school? This would not include school activities like football or band practice.

9 If yes, 12c2. How many of your children?
- 7 One
- 2 Two
- 0 Three
- 0 Four

114 No
1 Don't Know

12d1. Are any of your school-age children in a before- or after-school day care program in a private school? Again, this would not include school activities like football or band practice.

10 If yes, 12d2. How many of your children?
- 8 One
- 2 Two
- 0 Three
- 0 Four

113 No
1 Don't Know

12e1. Are any of your school-age children cared for before or after school in another private home?

53 If yes, 12e2. How many of your children?
- 41 One
- 12 Two
- 0 Three
- 0 Four

Please tell me who provides this care. Is it....
(Read list and mark all that apply.)

12e3. A relative
- 24 Yes
- 29 No

12e4. A nonrelative
- 28 Yes
- 25 No

70 No
1 Don't Know

12f1. Are any of your school-age children cared for in some other location?

6 If yes, 12f2. How many of your children?
- 6 One
- 0 Two
- 0 Three
- 0 Four

12f3. Please specify the location.

117 No
1 Don't Know

13. Have you had difficulty finding any of the following types of care in your area? (Read the following list and mark all that apply.)

13a. Infant care

66 Yes
126 No
13 Don't Know

13b. Toddler care

39 Yes
155 No
11 Don't Know

13c. Preschool care

34 Yes
157 No
14 Don't Know

13d. Before- and after-school care

38 Yes
150 No
17 Don't Know

13e. Care on school snow days or teacher work days

42 Yes
144 No
19 Don't Know

13f. Summer care for school-age children

35 Yes
148 No
22 Don't Know

13g. Care for sick children

59 Yes
136 No
10 Don't Know

13h. Care for children with special needs such as handicaps, emotional problems, or chronic illness

19 Yes
158 No
28 Don't Know

13i. Care before 6 a.m. or after 7 p.m. Monday through Friday

52 Yes
140 No
13 Don't Know

13j. Any other types of care?

7 Yes (specify)
193 No
5 Don't Know

14. Have you ever changed your care arrangement because of any of the following reasons? (Read following list and mark response for each.)

14a. Care was not conveniently located

24 Yes
179 No
2 Don't Know

14b. Care was not affordable

27 Yes
176 No
2 Don't Know

14c. Quality of care is not as good as I would want it to be

55 Yes
148 No
2 Don't Know

14d. Any other reason?

17 Yes
186 No
2 Don't Know

14e. How many times in the past 2 years have you changed your care arrangements because of problems?

205 None

15. I am now going to ask you some general questions about your family. Could you tell which of the following best describes your household? (Read the following list and mark only one.)

278	There are two parents, both working
194	There are two parents, with one working
9	There are two parents, with neither working
49	There is one parent, who is working
18	There is one parent, who is not working
4	Other (specify)

16. Are you white, black, Hispanic, or some other race?

447	White
91	Black
5	Hispanic
2	Asian
6	Another race (specify)
1	Refused to answer

17a. Is your family's total yearly income before taxes above or below $35,000?

259	Above	If above, 17b. Is it above $52,500 a year?
	118	Yes
	131	No
	10	Don't Know or Refused to Answer
264	Below	If below, 17b. Is it below $17,500 a year?
	77	Yes
	175	No
	12	Don't Know or Refused to Answer
29	Don't Know	

18. (Note sex of respondent and mark appropriate answer.)

148	Male
404	Female

Appendix C

ESTIMATES FROM THE JLARC/VCU SURVEY OF PARENTS USED TO CALCULATE THE COST OF REGULATION

A telephone survey was completed with 1,820 Virginia families. Using this survey data as a base, JLARC staff calculated the cost of regulating child day care. There were five steps in this process: (1) determining the number of Virginia households using day care arrangements, (2) converting the number of households using each type of care into the number of children in those arrangements, (3) converting the number of children in each arrangement into a number of providers, (4) using the number of providers to determine a number of regulatory staff required for regulation under different regulatory options, and (5) determining the State's direct and indirect costs for these regulatory personnel. The remainder of this appendix explains these five steps in greater detail.

Virginia Households Using Day Care Arrangements

The first step in calculating the cost of regulating child day care was to determine the number of Virginia families using various day care arrangements. For this step, proportions from the sample of 1,820 households from the JLARC/VCU survey of parents were applied to the latest U.S. Bureau of the Census 1987 provisional estimate of the total number of Virginia households, 2,171,000. These proportions, and the resulting estimates of households using various arrangements, are shown in Table C-1. The estimates were used by JLARC staff in the report.

When making inferences from a sample to a population, some random error due to sample selection can be expected. Standard deviations to compute sampling errors for each proportion are also given in Table C-1. These standard deviations could then be used to compute sampling errors and confidence intervals whenever proportions from the sample are used to make inferences to the population. For example, the estimate of the number of Virginia households with children under 13 years of age is based on the sample proportion .3033, which has a standard deviation of .0108. Using these results to calculate a confidence interval at the 95 percent level of confidence, the estimated number of households with children under 13 years of age ranges from 612,439 to 704,490.

Number of Children in Day Care Arrangements

The second step in calculating the cost of regulating care required an estimate of the number of children in different day care arrangements. To achieve this second step, the estimated mean number of children per household in each type of care was multiplied by the number of households using that type of care. These means,

Table C-1

Proportions Used To Estimate Virginia Households Using Various Day Care Arrangements

Description of Household	Proportion	Standard Deviation	Estimated Number of Households
Children under 13	.3033	.0108	58,464
Children in day care	.1126	.0074	44,455
Children cared for in family day care homes	.0621	.0057	34,819
Children in centers or nursery schools	.0396	.0046	85,972
Children cared for in their own home	.0242	.0036	52,538
Children in private school extended day programs	.0055	.0017	11,941
Children in public school extended day programs	.0049	.0016	10,638
Children in some other arrangement	.0071	.0020	15,414

Source: JLARC/VCU survey of parents.

and the resulting estimate of children in each day care arrangement, are shown in Table C-2. Standard deviations for each mean are also given in Table C-2. Again, sampling errors and confidence intervals can be calculated anywhere in the report where means from the sample were used. Since two estimates, the proportion of households and the mean number of children, are used as components for yet a third estimate, the number of children in each arrangement; the widest possible range would be based on the sampling errors of the two component estimates. For instance, at the 95 percent level of confidence, the estimated number of households using family day care homes ranges from 110,504 to 159,134. The mean number of children in this arrangement at the 95 percent level of confidence can be from 1.42 to 1.22. Therefore, the number of children in this arrangement can range from 134,815 to 225,970.

Table C-2

Means Used To Estimate Virginia Children In Various Day Care Arrangements

Location of Care	Mean Number of Children	Standard Deviation of Mean	Estimated Number of Children
Family day care homes	1.32	0.05	177,961
Child care centers or nursery schools	1.32	0.06	113,469
Own home	1.46	0.11	76,180
Private school extended day programs	1.20	0.14	14,329
Public school extended day programs	1.22	0.16	12,978
Some other arrangement	1.00	0	15,414

Source: JLARC/VCU survey of parents.

Number of Providers

Step three in calculating cost figures for regulation (other than for in-home care and care in some other arrangement) was to determine the number of providers offering day care services by dividing the total number of children in various arrangements by the average number of children in those arrangements. The JLARC and VCU surveys of providers were used to determine the average number of children in each type of care, since each of these surveys included a question asking providers for this information. The estimated number of providers in Virginia offering each type of child day care is summarized in Table C-3.

As noted, one exception to using the average number of children in care to estimate the number of providers was for in-home providers. It was assumed that each provider would take care of all the children in one household. Therefore, the number of in-home providers was taken directly from the number of households using that type of day care, minus the number of households reporting children in self care in their own home. An estimated 4,776 Virginia households have children in self care (proportion .0022, standard deviation of .0011). Of the estimated 47,762 in-home providers, the Department of Social Services (DSS) has reported that 281 receive

Table C-3

Estimated Number of Virginia Child Day Care Providers

Type of Provider	Number in Virginia
In-home providers	47,762
Small day care home providers	32,541
Group day care home providers	9,187
Child care centers and nursery schools	1,721
Extended day programs in schools	650
Other arrangement*	242

* Not all of these providers would necessarily meet the definition of day care, as defined in Chapter IV.

Source: JLARC/VCU survey of parents and JLARC and VCU surveys of providers.

public funding. Under the regulatory recommendations in the JLARC report, these providers could volunteer to be regulated in order to continue receiving public funds. Therefore, 281 in-home providers were included for purposes of determining the State cost of regulating child day care.

For family day care, two different averages were used. For day care within our known sample frame of 4,035 family day care homes, the average number of children from our survey of regulated providers was used, 5.67 (standard deviation of the mean of .13). This accounted for 22,878 children. For the remainder of the children in family day care homes (155,083), an average from the JLARC/VCU survey of unregulated providers was used, 4.11 (standard deviation of the mean of .57). This method resulted in an estimate of 41,768 family day care homes in Virginia, 37,733 unregulated and 4,035 regulated.

The overall number of family day care providers was divided into three types: small day care homes, group day care homes, and family day care homes operating as centers. Small day care homes were defined as those caring for fewer than six children. Group day care homes were defined as those caring for between six and 12 children. Family day care homes operating as child care centers were defined as those caring for 13 or more children.

Again, different proportions were used. For day care within the known sample frame of 4,035 homes, proportions of .49 (proportion of providers from the JLARC survey of regulated providers who cared for fewer than six children with standard deviation of .0284), .50 (proportion of providers from the JLARC survey of

regulated providers caring for six or more children with standard deviation of .0284), and .01 (proportion of providers from the JLARC survey of regulated providers caring for 13 or more children with standard deviation of .0057) were applied. For the remaining family day care homes, proportions of .81 (proportion of providers from the JLARC/VCU survey of providers who cared for fewer than six children with standard deviation of .0539) and .19 (proportion of providers from the JLARC/VCU survey of providers caring for six or more children with standard deviation of .0539) were applied. None of the unregulated providers in the survey cared for more than eight children. The estimated number of small day care home providers is 32,541. The estimated number of group day care home providers is 9,187 and an estimated 40 family day care homes are operating as child care centers.

For child care centers and nursery schools, survey responses from centers and nursery schools were combined to derive an average number of children in care, 67.5 (standard deviation of the mean of 3.79). Therefore, the estimated number of child care centers and nursery schools in the State is 1,721: 1,681 centers and nursery schools and 40 family day care homes operating as centers.

For private school extended day programs, the estimated number of children in these programs was divided by the average number of children per program determined from the provider survey, 32.5 (standard deviation of the mean of 5.19). Therefore, the estimated number of private school extended day programs in Virginia is 441.

For public school extended day programs, survey responses from two sources were used to derive the average number of children in care. The first source was the average number of children per extended day site in programs sponsored by school divisions, 79.48 (standard deviation of the mean of 35.87.) The average number of children per public school-sponsored program (not division-sponsored but contracted out to other providers) was 45 (standard deviation of the mean of 0). The estimated number of children in public extended day programs was divided by a combined average of 62.24 from the two sources. Therefore, an estimated 209 extended day sites operate in public schools. When combined with private school programs, an estimated 650 extended day sites operate in the State.

As noted previously, an exception was made to using the average number of children in care to estimate the number of providers offering care in some other arrangement. For these programs, an actual number of sponsors operating programs in Virginia could be determined. Lists were available of existing recreation and parks departments, Boys Clubs and Girls Clubs, and summer camp sponsors. A total of 242 of these sponsors were identified from listings and included in the sample frame. Using 242 as the number of programs offering care in some other arrangement assumes that each sponsor offers at least one program.

Number of Regulatory Staff

The next step was to determine the number of regulatory staff (excluding clerical personnel) required to regulate the types of providers JLARC staff recommended be subject to regulation. Two types of regulatory staff are primarily required for current licensure of child day care facilities — licensing specialists and licensing administrators. The required number of licensing specialist positions are determined by the Department of Social Services using caseload standards that determine the number of facilities a specialist is responsible for regulating. Licensing administrator positions are determined by the number of licensing specialists they can supervise. DSS uses a standard of six licensing specialists per one administrator.

Three regulatory options were used for illustrative purposes. The first option used was licensure of all family day care homes, child care centers, school-based extended day programs, care in some other arrangement, and in-home providers receiving public funds (an estimated 44,622 facilities or programs). Licensure of all these providers, using the caseload standard of 50 centers per licensing specialist and 100 homes per licensing specialist recommended by the National Association for the Education of Young Children (NAEYC) would require 473 licensing specialists and 79 licensing administrators.

The second option was registration of all family day care homes, child care centers, school-based extended day programs, care in some other arrangement, and in-home providers receiving public funds which would require 18 licensing specialists and 3 licensing administrators. This calculation was obtained assuming that 20 percent of the providers, or 8,924 would be monitored annually. A caseload of 500 facilities per specialist, as recommended by NAEYC, was then applied to the 8,924 providers.

The third option used was a combination of licensure and registration, with group day care homes, child care centers, school-based extended day programs, and care in some other arrangement being licensed and small day care homes and in-home providers receiving public funds registered. Registration of small day care homes and these in-home providers, with licensure for all other providers, would require 157 licensing specialists and 26 licensing administrators. This calculation assumes a caseload of 50 facilities per specialist for centers (as recommended by NAEYC) and 100 facilities per specialist for group day care homes (as recommended by NAEYC). For small day care homes and the in-home providers it assumes that 20 percent of these providers, or 6,564, would be monitored annually. A caseload of 500 facilities per specialist was then applied to the 6,564 providers.

State's Cost for Regulatory Staff

The final step was to determine State costs for licensing positions required under each of the regulatory options — licensure, registration, and a combination of

both. State costs were based on the personnel and operating costs to employ regulatory staff, both licensing specialists and licensing administrators. The cost of clerical personnel were not included in these figures.

Personnel costs, defined as salaries and benefits, are different for Northern Virginia compared to the rest of the State. These costs also differ for specialists and administrators. Table C-4 summarizes personnel costs for these positions.

Operating costs for licensing specialists and administrators are the same. Operating costs are defined as telephone, space, supply, insurance, and travel costs. For each position, operating costs are $5,330 annually.

In addition to personnel and operating costs, there are start-up costs associated with each position. Start-up costs for both types of licensing positions include office furniture, office machines, computer terminals, and associated maintenance costs. For licensing administrators, these costs also include a computer printer

Table C-4

Salary and Benefit Costs For DSS Regulatory Staff

Specialist	Costs	Administrator	Costs
Northern Virginia		*Northern Virginia*	
Salary	$26,745	Salary	$29,230
FICA	2,046	FICA	2,236
Group Insurance	270	Group Insurance	295
Medical Insurance	1,270	Medical Insurance	1,270
Retirement	3,857	Retirement	4,215
Total	$34,188	Total	$37,246
Rest of State		*Rest of State*	
Salary	$24,458	Salary	$26,745
FICA	1,871	FICA	2,046
Group Insurance	247	Group Insurance	270
Medical Insurance	1,270	Medical Insurance	1,270
Retirement	3,527	Retirement	3,857
Total	$31,373	Total	$34,188

Source: JLARC staff analysis of Department of Planning and Budget data.

and software packages. For licensing specialists, start-up costs are $5,970 per specialist. These costs are $9,617 for licensing administrators.

Due to the difference in personnel costs for positions located in Northern Virginia versus the rest of the State, a proportion of positions needed for regulation in Northern Virginia was determined. Of Virginia families using day care, surveyed as part of the JLARC/VCU survey of parents, 27.3 percent lived in localities served by the Northern Virginia regional office of DSS (standard deviation of .01). Therefore, 27.3 percent of licensing positions required for regulation were assigned to the Northern Virginia regional office.

For the first option (licensure of all providers except in-home providers not receiving public funds), 129 specialists and 22 administrators were assigned to the Northern Virginia regional office. The remaining 344 specialists and 57 administrators were assigned to the rest of the State. Under the second option (registration of all providers except in-home providers not receiving public funds), five specialists and one administrator were assigned to the Northern Virginia region. The other 13 specialists, and two administrators were assigned to the rest of the State. For the third option, (registration of small day care homes and in-home providers receiving public funds and licensure of all other providers), 43 specialists and seven administrators were assigned to Northern Virginia and 114 specialists and 19 administrators were assigned to the rest of the state.

State costs for the first option, licensure of all providers (except in-home providers not receiving public funding), would be $20,912,852 in personnel and operating costs. Start-up costs, when determined for the additional positions required above those currently employed, would be an additional $3,325,194. (For an explanation of the calculations used to derive cost figures for option one, see Table C-5.)

State costs for the second option, registration of all providers (except in-home providers not receiving public funds), would be $796,341 in personnel and operating costs. No start-up costs would be associated with registration since fewer licensing positions would be required than are currently employed. (For an explanation of the calculations used to derive cost figures for option two, see Table C-6.)

For the third option, registration of small day care homes and in-home providers receiving public funds and licensure of all other providers, State personnel and operating costs would be $6,932,290. Start-up costs for this third option would be $928,973 for the addition of positions above those currently employed. (For an explanation of the calculations used to derive cost figures for option three, see Table C-7.)

Table C-5

State Costs for Regulatory Options: Calculations for Option One (Licensure)

Personnel Costs		
129 Northern Virginia specialists	($34,188) =	$ 4,410,252
344 Other regional specialists	($31,373) =	10,792,312
22 Northern Virginia administrators	($37,246) =	819,412
57 Other regional administrators	($34,188) =	1,948,716
Operating Costs		
552 Regulatory staff	($5,330) =	2,942,160
Total Personnel and Operating Costs		$20,912,852
Additional First-Year Only Start-Up Costs		$ 3,325,194

Note: Summary table does not include clerical personnel.

Source: JLARC staff analysis of Department of Planning and Budget data.

Table C-6

State Costs for Regulatory Options: Calculations for Option Two (Registration)

Personnel Costs		
5 Northern Virginia Specialists	($34,188) =	$170,940
13 Other Regional Specialists	($31,373) =	407,849
1 Northern Virginia Administrator	($37,246) =	37,246
2 Other Regional Administrators	($34,188) =	68,376
Operating Costs		
21 Regulatory Staff	($5,330) =	111,930
Total Personnel and Operating Costs		$796,341

Source: JLARC staff analysis of Department of Planning and Budget data.

Table C-7

State Costs for Regulatory Options: Calculations for Option Three (Licensure and Registration)

Personnel Costs

43 Northern Virginia specialists	($34,188) =	$1,470,084
114 Other Regional Specialists	($31,373) =	3,576,522
7 Northern Virginia Administrators	($37,246) =	260,722
19 Other Regional Administrators	($34,188) =	649,572

Operating Costs

183 Regulatory Staff	($ 5,330) =	957,390

Total Personnel and Operating Costs	$6,932,290
Additional First-Year Only Start-Up Costs	$ 928,973

Note: Summary table does not include clerical personnel.

Source: JLARC staff analysis of Department of Planning and Budget data.

Appendix D

CHARACTERISTICS OF CHILD CARE PROGRAMS BY SPONSORSHIP

Table D-1

Characteristics of Programs Offered by Religiously-Exempt Child Care Centers According to the Manner in Which the Center Classified its Program

Definitional Characteristic	Non-Profit Status (N=22)	Mothers' Morning or Day Out (N=3)	Occasional Care (N=1)	Church Sponsored (N=21)	School Sponsored (N=4)	Other Unspecified (N=1)
Operate On A Part-Day Basis						
Care provided in mornings	86%	100%	0%	90%	50%	100%
Care provided in afternoons	82%	0%	100%	81%	100%	100%
Care provided in evenings	5%	0%	0%	5%	0%	0%
Care provided overnight	0%	0%	0%	0%	0%	0%
Have A Contract With Parents						
Written agreement	64%	33%	0%	62%	50%	100%
Verbal agreement	14%	0%	0%	14%	25%	0%
Other agreement	9%	33%	0%	10%	0%	0%
No agreement	9%	33%	100%	10%	25%	0%
Is Responsible For Children						
Children may not leave without permission	100%	100%	100%	100%	100%	100%
Children signed in and out	55%	33%	100%	57%	75%	100%
Is Available On Ongoing Basis						
Operate year-round	55%	0%	0%	62%	0%	100%
Operate school year only	41%	100%	100%	33%	100%	0%
Operate five or more days each week	91%	33%	100%	90%	100%	100%
Operate three or four days each week	5%	33%	0%	5%	0%	0%

Note: Columns do not necessarily add to 100 percent due to rounding or non-response and because many categories are not mutually exclusive.

Source: JLARC staff survey of providers.

Table D-2

Characteristics of Programs Offered by State-Licensed Child Care Centers According to the Manner in Which the Center Classified its Program

Definitional Characteristic	Non-Profit Status (N=97)	For-Profit Status (N=92)	Mothers' Morning or Day Out (N=6)	Occasional Care (N=8)	Church Sponsored (N=36)	Employer Sponsored (N=4)	Government Sponsored (N=10)	Hospital Sponsored (N=2)	School Sponsored (N=9)	Other (N=10)
Operate On A Part-Day Basis										
Care provided in mornings	90%	100%	100%	100%	92%	100%	100%	50%	100%	90%
Care provided in afternoons	95%	99%	67%	100%	92%	100%	100%	100%	100%	90%
Care provided in evenings	18%	23%	50%	38%	19%	50%	0%	50%	0%	20%
Care provided overnight	0%	1%	0%	0%	0%	0%	0%	0%	0%	0%
Have A Contract With Parents										
Written agreement	94%	97%	100%	100%	94%	100%	80%	100%	100%	90%
Verbal agreement	3%	1%	0%	0%	3%	0%	10%	0%	0%	0%
Other agreement	1%	1%	0%	0%	0%	0%	0%	0%	0%	0%
No agreement	1%	0%	0%	0%	0%	0%	10%	0%	0%	0%
Is Responsible For Children										
Children may not leave without permission	99%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Children signed in and out	70%	72%	67%	88%	69%	100%	40%	100%	100%	90%
Is Available On Ongoing Basis										
Operate year-round	66%	97%	67%	75%	69%	100%	20%	50%	22%	70%
Operate school year only	32%	3%	33%	25%	28%	0%	80%	50%	78%	30%
Operate five or more days each week	94%	100%	100%	100%	97%	100%	60%	100%	100%	100%
Operate three or four days each week	4%	0%	0%	0%	0%	0%	40%	0%	0%	0%

Note: Columns do not necessarily add to 100 percent due to rounding or non-response and because many categories are not mutually exclusive.

Source: JLARC staff survey of providers.

Table D-3

Definitional Assessment of Programs Offered by Unlicensed Hospital-Sponsored Child Care Centers According to the Manner in Which the Center Classisfied its Programs

Definitional Characteristic	Non-Profit Status (N=3)	Mothers' Morning Or Day Out (N=1)	Occasional Care (N=2)	Employer Sponsored (N=3)	Hospital Sponsored (N=3)
Operate On A Part-Day Basis					
Care provided in mornings	100%	100%	100%	100%	100%
Care provided in afternoons	100%	100%	100%	100%	100%
Care provided in evenings	67%	0%	50%	67%	67%
Care provided overnight	0%	0%	0%	0%	0%
Have A Contract With Parents					
Written agreement	100%	100%	100%	100%	100%
Verbal agreement	0%	0%	0%	0%	0%
Other agreement	0%	0%	0%	0%	0%
No agreement	0%	0%	0%	0%	0%
Is Responsible For Children					
Children may not leave without permission	100%	100%	100%	100%	100%
Children signed in and out	100%	100%	100%	100%	100%
Is Available On Ongoing Basis					
Operate year-round	100%	100%	100%	100%	100%
Operate school year only	0%	0%	0%	0%	0%
Operate five or more days each week	100%	100%	100%	100%	100%
Operate three or four days each week	0%	0%	0%	0%	0%

Note: Columns do not necessarily add to 100 percent due to rounding or non-response and because many categories are not mutually exclusive.

Source: JLARC staff survey of providers.

Table D-4

Definitional Assessment of Programs Offered by Certified As Licensed Child Care Centers According to the Manner in Which the Center Classified its Program

Definitional Characteristic	Non-Profit Status (N=3)	For-Profit Status (N=2)	Church Sponsored (N=1)	Government Sponsored (N=1)
Operate On A Part-Day Basis				
Care provided in mornings	100%	100%	100%	100%
Care provided in afternoons	100%	100%	100%	100%
Care provided in evenings	0%	0%	0%	0%
Care provided overnight	0%	0%	0%	0%
Have A Contract With Parents				
Written agreement	100%	100%	100%	100%
Verbal agreement	0%	0%	0%	0%
Other agreement	0%	0%	0%	0%
No agreement	0%	0%	0%	0%
Is Responsible For Children				
Children may not leave without permission	100%	100%	100%	100%
Children signed in and out	67%	0%	100%	0%
Is Available On Ongoing Basis				
Operate year-round	33%	100%	100%	0%
Operate school year only	67%	0%	0%	100%
Operate five five or more days each week	67%	100%	100%	0%
Operate three or four days each week	33%	0%	0%	100%

Note: Columns do not necessarily add to 100 percent due to rounding or non-response and because many categories are not mutually exclusive.

Source: JLARC staff survey of providers.

Appendix E

AGENCY RESPONSES

As part of JLARC's data validation process, each State agency involved in an assessment effort is given the opportunity to comment on an exposure draft of the report.

Appropriate technical corrections resulting from the written comments have been made in this version of the report. Page references in the agency responses relate to an earlier exposure draft and may not correspond to page numbers in this version of the report.

Included in this appendix are the following responses:

- Secretary of Health and Human Resources
- Department of Social Services
- Department of Housing and Community Development
- Department of Taxation

STATEMENT OF

EVA S. TEIG
Secretary of Health and
Human Resources

Monday, July 10, 1989

JLARC
House Room D

REGULATION AND PROVISION OF CHILD CARE IN VIRGINIA

MEMBERS OF THE JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION

I am pleased to have the opportunity to comment on the JLARC Report on the Regulation and Provision of Child Care in Virginia.

First, let me say that this report is the most comprehensive licensing and regulatory review ever done here in Virginia and possibly nationally, and I commend the JLARC staff for the depth and substance of its review.

Second, I am proud that during the past 3 1/2 years, the Governor and the General Assembly have joined together to aggressively pursue a child care agenda that includes: accessibility for low-income families; corporate involvement; the governmental structure of Child Care and Early Childhood Programs; and now, the regulatory framework required.

This is the last remaining piece that was needed to put Virginia on the threshold of a viable strategy for child care in the 1990's.

Apart from the excellent JLARC team, I would like to thank the members of the General Assembly who served on an AD HOC Task Force set up at my request during the summer of 1987. The need for the JLARC study was identified at that time as we spent

several months beginning to identify changes needed in the regulatory framework.

I would also like to thank the members of HJR 27 (the Subcommittee Studying Child Care and Early Childhood Programs) for their review of, and dedication to, the whole issue of child care and early childhood programs. They, too, identified key concerns and problems in both regulatory and policy areas.

It is obvious from the recommendations and the presentation made here today that the primary responsibility for the implementation of this report will fall upon the Secretary of Health and Human Resources. Therefore, I would like to take a brief moment to underline the general strategy I intend to follow to implement the recommendations contained within the report.

1. I will immediately develop a plan for the implementation of the recommendations with dates for completion, for presentation at the next meeting of HJR 27. It is absolutely critical that the implementation of these recommendations transcend the passing of the torch from one administration to another.

2. Secondly, I will attempt to draw on expertise from both public and private sources and from other states where appropriate, to help begin the comprehensive improvements of

the regulatory framework called for by the report. We cannot and should not regulate by exclusion. Virginia needs and deserves a regulatory environment that is first and foremost protective of its children, and flexible enough to meed the "real world" child care needs of the 1990's. We must look beyond rigid traditional definitions into a future where economic viability will be dependent on child care, and where a variety of options must be available to both parents and employers.

3. I will make a final report to HJR 27 members before the end of this administration on any new issues, which may surface, and on any recommendations which may require legislative action in January, 1990.

This report, and the amount of information it contains, can be used to design and develop a system of regulations which does not hinder, but rather helps, the provisions of quality child care. Our children deserve nothing less.

###

JUL 03 1989

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LARRY D. JACKSON
COMMISSIONER

COMMONWEALTH of VIRGINIA

DEPARTMENT OF SOCIAL SERVICES

July 3, 1989

Mr. Phillip Leone, Director
Joint Legislative Audit and Review Commission
General Assembly Building
Suite 1100
Capitol Square
Richmond, Virginia 23219

Dear Mr. Leone:

Personally and on behalf of Department staff, I commend JLARC on the outstanding quality of the report, Child Day Care in Virginia: Regulation and Provision. JLARC staff are to be commended for their thorough, comprehensive analysis of the complexities of the current child care regulation scene and for their convincingly well-reasoned recommendations.

The Department finds those recommendations overwhelmingly sound and supportable and looks forward to working toward their implementation through the planning directions and efforts JLARC has proposed to the Secretary of Health and Human Resources.

Because the Department found no need to take strong exception to any of the recommendations, the majority of the enclosed comments address implementation issues.

Please feel free to have your staff confer directly with staff of the Division of Licensing Programs if further discussion of any of these comments and suggestions would be helpful.

Again, all of us are deeply appreciative of the extraordinary quality of this report. If its recommendations can be successfully implemented, I believe Virginia will become a national model for equitable and sound child day care regulatory

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administration. I pledge the vigorous efforts of the Department to realize that goal on behalf of Virginia's children, families, providers, and other beneficiaries of sound child care regulatory policy.

Cordially,

Larry D. Jackson
Commissioner

/sm

Enclosure

cc: The Honorable Eva S. Teig
Secretary of Health and Human Resources

B. Norris Vassar
Deputy Commissioner for State Programs

Carolynne H. Stevens, Director
Division of Licensing Programs

Virginia Department of Social Services
Comments on JLARC Exposure Draft:
Child Day Care in Virginia: Regulation and Provision

July 3, 1989

COMMENTARY

III. Regulation of Child Day Care in Virginia

Page 69, Line 1

The example in the report regarding first aid training is accurate for the 1986 Child Care Center Standards. However, effective July 1, 1989 both registered nurses and licensed practical nurses who have current CPR training will be considered as qualified in meeting the first aid requirement. The Council's revised standards accept training equivalent to the Department of Health curriculum for first aid training.

Reasonableness and Enforceability of Standards

Page 69

The Department has been aware that a number of field staff view some of the standards as unreasonable or difficult to enforce. It should be noted that the comments of staff in the JLARC survey relate to the 1986 Standards. In the interim between the JLARC survey and this report, the Child Day Care Council has adopted standards effective July 1, 1989.

The Child Day-Care Council solicited input from the field licensing specialists. A questionnaire was sent to them when the Council began the task of revising standards. Their input was considered during the development of proposed standards. After the standards were published in the Virginia Register for comment, one specialist from each region was invited to address the Council with comments. The staff comments were taken into account before the standards were promulgated. The Council will be soliciting continued feedback from the field on the new standards after July 1, 1989. However, reasonable differences in views among regulatory professionals can be anticipated.

Recent changes in the organizational structure of the Department will allow Specialists to have more contact with central office personnel. It is expected that this removal of one layer of supervisory personnel will evoke more positive feedback from line staff.

Additionally, both the Department and Council are aware of the need for standards tailored to special populations such as occasional care, sick child care, etc. Council will be addressing some of these special groups in the current year. Also, as JLARC notes, revision of the statute to eliminate the numerous exceptions and exemptions and to streamline the definitions and processes should do much to improve the morale of licensees and licensing staff alike.

IV. Redefining the State's Regulatory Role

Page 136, Paragraphs 1 and 2

Much emphasis has been placed on parental involvement by the HJR 27 Study. Minimal parental involvement and minimal attention to matching child-program-parental expectation are the bases of the particular standard cited. As a goal, standards should be as measureable and easy to enforce as possible. Some important standards will be difficult to measure and enforce because this requires subjective judgement. Vermont is one example of a state which has recently moved in the direction of developing more standards which require subjective judgement. The Department's experience has shown that it is sometimes necessary to have standards which are difficult to measure and enforce but which are needed to protect children from cumulative risks over time as well as from immediate harm.

IMPLEMENTATION ISSUES

Budget Concerns

Page 155, Recommendation 16

If flat two-year licensure is adopted, either the application fees must be adjusted or the provider support system will face an automatic 50% reduction in the special fund that is its sole source of funding.

Page 158 - 165

If registration processing is made a clerical function, then the 1:500 ratio may be reasonable for a specialist. Otherwise this ratio is questionable because of the need to inspect a meaningful sample of homes, resolve complaints and perform adverse enforcement. Based on the Department's experience with licensed centers the following case activity rates can be anticipated annually:

Complaints	36% (180 on caseload of 500)
Denials and Revocations	1% (5 on caseload of 500)
Injunctions	1% (5 on caseload of 500)

Only experience can confirm whether registration caseload activity would prove comparable.

Pages 198 through 202

The Department strongly endorses the comments regarding the need for expanded efforts in the area of provider and consumer training/education services. At this time the only funding for training comes from application fees and is earmarked for provider training. Therefore, any expansion of provider training in terms of additional topics/methods, or addition of meaningful consumer training must receive additional funding. The Department would continue to stretch its resources by collaboration with VPI Extension, other agencies, and the private sector.

OTHER IMPLEMENTATION ISSUES

IV. Redefining the State's Regulatory Role

Page 89, Recommendation 2

A valid point is made on page 87 to the effect that part-day care generally means fewer than 24 hours but occasionally "may be provided for a more extended period." It might, therefore, be wise to develop the definition of day care to encompass occasional overnights up to some limit (which might differ for centers and homes) so that business trips, vacations, etc. could be accomodated without having to license day care programs additionally as foster/group homes.

Pages 98 - 114 (Other Sponsors of Children's Programs)

In regard to the programs in this section which deal with school age children it appears possible that some incentive might inadvertently be created for these programs to take less responsibility (e.g., in regard to a child's whereabouts), in order to avoid licensure, this would not be desirable in terms of the children's protection.

Page 114, Line 3

"Regular" and "ongoing" need to be operationally defined.

V. Reconsidering the Regulatory System

Page 129, Paragraph 2, Line 9

Insert additional paragraph: "A second disadvantage is that parents may misperceive the level of State assurances being offered (cf., "registered nurse" or "registered pharmacist") and be lulled into a false sense of security. The extent of this potential problem would depend on the design of the registration approach and could be at least partially overcome by a major parent education effort.

This problem might be significantly reduced or alleviated through use of a different nomenclature. "Enrolled", "Recorded" and "Posted" are examples of terms which might be used to denote registration without implying a high level of state supervision.

Page 155, Recommendation 16 and Page 158, Recommendation 19

If two-year licensure is adopted, it might be wise to consider including authority to reduce the licensure status to "probationary" if a facility is found to be in serious non-compliance, yet the situation is not serious enough for the Department to consider revocation. As a protection for children in care who may be in sub-standard care for two years the Department needs another tool, such as a probationary license, which could be issued if serious violations are found during a monitoring visit. Some consideration should be given to limiting the period allowed on probationary status, similar to current time limits on Conditional and Provisional licenses.

Pages 158 - 165

Clarification is needed in regard to several issues involved in the proposed system of registration:

1. What are the suggested procedures for assuring correction of violations in a registered home?

2. What procedures (e.g. injunction) are suggested if a home fails to meet one or more critical components of registration (such as criminal records clearance if it were to be required)?

3. When complaints or inspections reveal violations should the procedures include staff follow-up to ensure correction, or merely self-certification by the provider that correction has occurred?

4. Does JLARC prefer a random annual sampling of a certain percentage of the caseload, as opposed to a certain percentage per year until 100% of the caseload has been monitored? (The random method might stimulate more sustained compliance.)

JUL 3 1989

COMMONWEALTH of VIRGINIA

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

NEAL J. BARBER
DIRECTOR

Fourth Street Office Building
205 North Fourth Street
Richmond, Virginia 23219-1747
(804) 786-1575

June 29, 1989

Mr. Philip A. Leone, Director
Joint Legislative Audit and
Review Commission
Suite 1100
General Assembly Building
Capitol Square
Richmond, VA 23219

Dear Mr. Leone:

I appreciate the opportunity to review this section of the JLARC exposure draft, Child Day Care in Virginia: Regulation and Provision.

I find the contents to be accurate, and I basically concur with the direction you are going. If my staff or I can be of further service, please do not hesitate to call us.

Sincerely,

Neal

Neal J. Barber

JP:BP

JUL 3 1989

COMMONWEALTH of VIRGINIA

Department of Taxation

Richmond, Virginia 23282

June 29, 1989

Mr. Philip A. Leone, Director
Joint Legislative Audit and Review Commission
Suite 1100, General Assembly Building
Richmond, VA 23219

Dear Phil:

Thank you for your letter of June 19 providing us with a draft copy of your study on child day care in Virginia.

We have reviewed the exposure draft and would like to offer several comments.

First, from the perspective of overall tax policy, serious questions exist regarding the efficacy and appropriateness of a tax expenditure for providing child care assistance, particularly to lower income taxpayers. Tax expenditures, no matter how carefully crafted, tend to be ineffective in targeting relief to those for whom it is most intended. For example, tax relief which is limited to persons with "low incomes" appears to provide benefits to persons who earn very little money. However, in reality, taxpayers with large amounts of earned income who operate businesses which show paper losses or who have substantial amounts of nontaxable income may also benefit from the tax expenditures.

This concern is no doubt partially responsible for the form of the child care assistance legislation recently enacted by the U. S. Senate. Although it is likely that the final version of the legislation will be changed by the House, 70% of the $1.75 billion cost of the Senate plan would be spent to provide subsidies to states for direct benefits to families.

Although final action on the federal proposals is not expected until this fall, it is also possible that a combination of the federal tax credit, the federal subsidies, and the state incentives proposed would provide more in tax and direct payments to some families than is actually expended for child care.

From the perspective of the revenue estimates contained in the draft, the numbers in the estimates and the examples contained in the report are consistent with the information we furnished to you earlier and appear to be correct. We have the 1987 child care deduction data which was not available earlier. I have attached a copy of this information. The number of returns claiming the child care deduction has grown by 2.3% and the total deduction amount claimed has increased by 20.5%. In view of these increases, you may want to use the newer data for purposes of the estimates in the report.

I would note that the revenue impact calculated for refundable tax credits is undoubtedly understated. The estimates are based on our return data only which does not take into account persons who may be eligible for the credit but who are not required to file a tax return. We have no data concerning the distribution characteristics of this group or the magnitude of their potential impact on the total revenue estimate. However, with the Virginia filing exclusion having been increased to $8,000 for married couples and $5,000 for single taxpayers, there may be a significant number of taxpayers who are not accounted for in our data. At the least, this is a data limitation which should be noted in the text. In fact, this may account for the differences between the 1986 and 1987 return data referenced above.

Further, the VAGI data used for producing the revenue estimates does not reflect filing status. Therefore, any estimate calculated on an income-sensitive basis does not account for whether the taxpayer is married or single. The legislative trend has been very strongly in favor of mitigating the effects of any marriage penalty in Virginia. The Virginia Tax Reform Acts of 1987 and 1989 were both constructed so that the major components recognized a distinction between married and single taxpayers. For example, the standard deduction and filing exclusion amounts are both higher for married than single and the income limitation amounts in the 1989 legislation are significantly higher for married than single taxpayers. Consequently, although your report does not suggest the specific form of a tax credit, this is another issue which may need to be addressed and is certainly a data limitation of which you may want to be aware.

Finally, from an administrative standpoint, the positive effects of a refundable tax credit may be offset by the negative effect on those persons who are not currently required to file tax returns because of the filing exclusion noted above. The increased filing exclusion and its effect in removing a large number of taxpayers from the tax rolls was a major selling point in the Virginia Tax Reform Act of 1987. A refundable tax credit will require the filing of at least a refund form by these taxpayers and will require that the form and the check be processed by the state. We have not attempted to estimate the administrative costs associated with a refundable credit, but there would clearly be recurring annual costs.

In summary, I believe that very careful consideration should be given to the appropriateness of using the tax structure as a substitute for a more direct form of child care assistance, such as vouchers or subsidies. The permanent study of all sales and use tax exemptions which was enacted by the 1989 General Assembly seems to be a clear indication that the legislature is concerned about the rapidly increasing numbers of tax expenditures being used in Virginia.

Although I do not have the complete text of the draft report and this issue may be discussed elsewhere, it appears likely that the nearly $20 million might be more effectively spent through a voucher or subsidy program where greater control over the use and beneficiaries of the funds can be exercised. As a political consideration, the elimination of any form of state expenditure for a sizeable number of taxpayers will undoubtedly generate a significant amount of opposition. This is particularly true with Option 1 where the credit is eliminated at income of $35,000.

Finally, if any credit is proposed, it should continue to be based on the federal credit base. One of the strongest arguments for adopting conformity to the federal income tax structure was the simplicity for taxpayers and the Commonwealth. The continuing commitment to this concept has been borne out by the preponderance of income tax legislation enacted since conformity began in 1972. Any credit based on something other than the federal base will significantly increase the administrative costs of the credit and force taxpayers to perform unnecessarily complicated calculations. Changing the credit base or creating a Virginia-specific credit base would create a <u>significant</u> departure from the time-tested benefits of conformity.

I appreciated the opportunity to review your report. While I recognize the need for and the benefits of affordable, quality day care in Virginia, I also believe that the appropriateness and efficiency of a tax expenditure to accomplish this goal should be very carefully considered.

If you have any additional questions or need further information, please do not hesitate to let me know.

W. H. Forst
Tax Commissioner

Attachment

6-29-89

1987 Tax Return Data

Vagi Class	Taxable Income	Number of Returns	Average Net Taxable Income	Avg. Top Tax Rate	Child Care Deductions	Number of Returns	Average Deduction
$0 - $999	$1,389,704	81,707	$17	2.00%	$66,198	80	$827
$1,000 - $1,999	$3,768,052	72,816	$52	2.00%	$144,902	181	$801
$2,000 - $2,999	$5,931,735	77,518	$77	2.00%	$270,731	295	$918
$3,000 - $3,999	$7,253,774	76,622	$95	2.00%	$473,340	494	$958
$4,000 - $4,999	$18,128,917	72,915	$249	2.00%	$1,015,289	1,009	$1,006
$5,000 - $5,999	$172,711,612	73,418	$2,352	3.83%	$1,704,719	1,548	$1,101
$6,000 - $6,999	$218,568,587	71,474	$3,058	3.83%	$2,533,620	2,183	$1,161
$7,000 - $7,999	$264,443,335	71,540	$3,696	3.83%	$3,465,717	2,694	$1,286
$8,000 - $8,999	$366,756,437	71,341	$5,141	3.83%	$4,297,563	3,217	$1,336
$9,000 - $9,999	$428,272,183	70,907	$6,040	3.83%	$5,290,438	3,676	$1,439
$10,000 - $10,999	$477,151,481	68,790	$6,936	5.00%	$6,124,724	4,122	$1,486
$11,000 - $11,999	$525,860,075	67,031	$7,845	5.00%	$7,277,792	4,560	$1,596
$12,000 - $12,999	$573,147,161	65,654	$8,730	5.00%	$7,832,281	4,931	$1,588
$13,000 - $13,999	$602,289,636	62,566	$9,626	5.00%	$8,296,446	4,946	$1,677
$14,000 - $14,999	$633,577,623	60,457	$10,513	5.00%	$8,720,302	5,146	$1,695
$15,000 - $15,999	$667,792,907	58,517	$11,412	5.00%	$8,502,305	5,043	$1,686
$16,000 - $16,999	$687,994,844	55,921	$12,303	5.00%	$8,435,968	4,924	$1,713
$17,000 - $17,999	$698,117,969	52,952	$13,184	5.00%	$7,930,014	4,600	$1,724
$18,000 - $18,999	$713,427,644	50,750	$14,058	5.00%	$7,819,443	4,622	$1,692
$19,000 - $19,999	$730,626,493	49,016	$14,906	5.00%	$7,876,894	4,589	$1,716
$20,000 - $20,999	$738,050,980	46,784	$15,776	5.00%	$7,446,223	4,362	$1,707
$21,000 - $21,999	$754,272,926	45,379	$16,622	5.00%	$7,548,602	4,489	$1,682
$22,000 - $22,999	$730,318,518	42,982	$17,457	5.75%	$7,316,618	4,281	$1,709
$23,000 - $23,999	$760,472,858	41,579	$18,290	5.75%	$7,264,079	4,295	$1,691
$24,000 - $24,999	$773,340,220	40,414	$19,135	5.75%	$7,632,691	4,460	$1,711
$25,000 - $25,999	$780,608,850	39,157	$19,935	5.75%	$7,521,316	4,433	$1,697
$26,000 - $26,999	$783,846,248	37,714	$20,784	5.75%	$7,535,261	4,331	$1,740
$27,000 - $27,999	$790,911,005	36,654	$21,578	5.75%	$7,295,367	4,301	$1,696
$28,000 - $28,999	$812,107,819	36,300	$22,372	5.75%	$7,745,275	4,473	$1,732
$29,000 - $29,999	$805,508,285	34,744	$23,184	5.75%	$7,335,140	4,263	$1,721
$30,000 - $34,999	$3,998,378,361	156,431	$25,560	5.75%	$37,181,001	21,205	$1,753
$35,000 - $39,999	$3,889,773,566	131,491	$29,582	5.75%	$36,199,826	20,181	$1,794
$35,000 - $44,999	$3,536,751,737	106,062	$33,335	5.75%	$32,996,946	17,919	$1,841
$40,000 - $49,999	$3,199,852,971	85,322	$37,503	5.75%	$28,985,027	15,092	$1,921
$45,000 - $54,999	$2,875,007,812	69,099	$41,607	5.75%	$24,498,401	12,298	$1,992

1987 Tax Return Data

Vagi Class	Taxable Income	Number of Returns	Average Net Taxable Income	Avg. Top Tax Rate	Child Care Deductions	Number of Returns	Average Deduction
$50,000 - $59,999	$2,528,009,532	55,394	$45,637	5.75%	$20,631,083	10,122	$2,038
$55,000 - $64,999	$2,136,457,916	42,901	$49,800	5.75%	$15,586,762	7,437	$2,096
$60,000 - $69,999	$1,824,684,957	33,774	$54,026	5.75%	$11,828,929	5,533	$2,138
$65,000 - $74,999	$1,540,347,463	26,533	$58,062	5.75%	$9,196,911	4,268	$2,155
$70,000 - $79,999	$1,297,478,142	20,758	$62,505	5.75%	$7,211,524	3,198	$2,255
$75,000 - $84,999	$1,080,826,157	16,207	$66,689	5.75%	$5,423,848	2,390	$2,269
$80,000 - $89,999	$909,319,950	12,881	$70,594	5.75%	$4,276,258	1,905	$2,245
$85,000 - $94,999	$759,895,619	10,064	$75,506	5.75%	$3,298,252	1,363	$2,420
$90,000 - $99,999	$654,065,198	8,191	$79,852	5.75%	$2,598,271	1,110	$2,341
$100,000 & Over	$9,246,851,403	53,990	$171,270	5.75%	$12,919,736	5,190	$2,489
Totals	$55,046,548,862	2,562,717	$21,480		$425,552,033	235,759	$1,805

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